# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 04 फरवरी, 2025 / 15 माघ, 1946

हिमाचल प्रदेश सरकार

**LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT**

**NOTIFICATION**

*Dated, the 9th December, 2024*

**No. : LEP-E/1/2024.**—In exercise of the powers vested under Section 17 (1) of the Industrial Disputes Act,1947, the Governor, Himachal Pradesh is pleased to order the publication of

awards of the following cases announced by the **Presiding Judge, Labour Court-**cum-**Industrial Tribunal, Dharamshala,** on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* **"e-Gazette:—**

| Sl. No. | Ref. No. | Petitioner | Respondent | Date of Award/Order |
|---|---|---|---|---|
| 1. | 850/16 | Raju Ram | The E.E. HPPWD, Dharampur | 06.07.2024 |
| 2. | 121/19 | Ishwar Singh | S.E.E.HPSEBL, Mandi | 15.07.2024 |
| 3. | 122/19 | Inder Singh | -do- | 15.07.2024 |
| 4. | 124/19 | Jaswant Singh | -do- | 15.07.2024 |
| 5. | 17/19 | Pradeep Kumar | Dy. Director Horticulture Chamba | 18.07.2024 |
| 6. | 16/19 | Naseem Begum | Dy. Director Horticulture Chamba | 20.07.2024 |
| 7. | 139/17 | Kuldeep Singh | D.F.O. Dehra | 06.07.2024 |
| 8. | 181/17 | Gere Ram | D.F.O. Suket | 30.07.2024 |
| 9. | 24/22 | Bhagwan Dass | The E.E. HPPWD, Dharampur | 30.07.2024 |
| 10. | 25/22 | Kamla Devi | -do- | 30.07.2024 |
| 11. | 98/19 | Asha Ram | D.F.O. Bilaspur | 31.07.2024 |
| 12. | 76/22 | Sanjeev Kumar | Dy. Director Horticulture Hamirpur | 31.07.2024 |
| 13. | 445/15 | Gian Chand | D.F.O. Pangi | 31.07.2024 |
| 14. | 612/15 | Sunil Kumar | G.M. Vamshi Hydro | 31.07.2024 |
| 15. | 103/19 | Sunil Kumar | M/s Divya Himachal Prakashan | 31.07.2024 |

By order,

Sd/-
(PRIYANKA BASU INGTY, IAS),
*Secretary (Lab. Emp. & O.P.).*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-**CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 850/2016

Date of Institution : 21.6.2017

Date of Decision : 06.7.2024

Shri Raju Ram s/o Shri Relu Ram, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner*.

*Versus*

The Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P.
. . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Deepak Azad, Ld. Adv.

For Respondent : Sh. Ravi Kumar, Ld. ADA

**AWARD**

The reference received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner, H.P., the terms of reference are as under:—

> "Whether alleged termination of the services of Shri Raju Ram s/o Shri Relu Ram, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 01-04-2000 by the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 11-12-2014 after delay of more than 14 years, without complying with the provisions of the Industrial Disputes Act,1947 is legal and justified? If not, keeping in view of working period from year, 1999 to 31-03-2000 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the petitioner was appointed as daily waged beldar by the Assistant Engineer, Sub Division HPPWD Mandap vide muster rolls no. 902, 1028, 1080, 1213, 1307, 1397 and 1461 in the month and year of 1999 to 2000. The petitioner completed 191 days by discharging his duties faithfully and sincerely and diligently but after completion his work he had retrenched without any cause and justification and without serving any mandatory notice for his retrenchment under the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The services of the petitioner were terminated *w.e.f.* 31.3.2000 only by oral instructions despite of repeated request on the part of the respondent. Many juniors of the petitioner were retained in the service even they were regularized and compensated by the respondent. It is alleged that respondent had violated the principle of 'last come first go' as prescribed in Section 25-G of the Act. The petitioner has spent his career making period of his life in the services of respondent department however he was illegally terminated. He had also asserted that he did not have knowledge about his constitutional rights and his father was got serious ailment due to asthma till his death in the year 2016. His father was not able to work and hence he looked after his father. In these circumstances he could raise dispute earlier but he served a legal demand notice under Section 2K of the Act by registered post on 11.12.2014 through his counsel which was duly received by the respondent but they were called by Conciliation Officer, Labour Office Mandi but the petitioner was not reinstated. In view of averments it is prayed that the termination of the petitioner may be set aside with the directions to the respondent to reinstate and regularize the services of the petitioner forthwith and to grant compensation of Rs.50,000/- for the wrongful termination of the petitioner.

3. In reply preliminary objections qua maintainability and the petition suffering from delay and laches have been raised. On merits, it is admitted that the petitioner was engaged on muster roll basis on 9/1999 and worked under the Mandap Sub Division upto 3/2000 thereafter he left the job out of his own sweet will. According to respondent there was no question of mandatory notice in writing indicating the reason of retrenchment under the provisions of Section 25-F of the Act. The petitioner left his job out of his own accord and after lapse of more than 18 years he preferred the present case. The respondent denied that any junior to the petitioner were retained or any workmen re-engaged and regularized except the workers who were regularized and reinstated by the order of the court. The petitioner however had left the job in the year 2000 so the question of

natural justice and the applicability of provisions of Industrial Disputes Act do not arise at all. The respondent also denied that any junior to the petitioner had been regularized by the respondent by order of the court.

4. Petitioner by way of rejoinder had denied the preliminary objections and reasserted the facts as stated in the petition.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 01-04-2000 is/was illegal and unjustified as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what services benefits, the petitioner is entitled to? . . *OPP*.

3. Whether the claim petition is not maintainable, as alleged? . . *OPR*.

4. Whether the claim petition suffers from delay and laches, as alleged? . . *OPR*.

Relief

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition.

7. Respondent has examined Shri Vivek Sharma, Executive Engineer, Division HPPWD Dharampur, District Mandi by way of affidavit RW-1. He also produced on record seniority list Ext. RW1/B.

8. I have heard the learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Relief : Claim petition is dismissed per operative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.1 & 2*

10. Both these issues are taken up together for the purpose of adjudication.

11. It is not disputed fact between the petitioner and the respondent that the petitioner was employed by the respondent vide muster rolls no. 902, 1028, 1080, 1213, 1307, 1397 and 1461 in the month and year of 1999 to 2000. The petitioner claimed that he had worked for 191 days and discharged his duties for the said period. The respondent on the other hand has admitted that petitioner was engaged on 9/1999 and worked uptil 3/2000 in Dharampur Division and he worked intermittently i.e. 103 days in 1999 and 88 days in the year 2000. Mandays chart Ext. RW1/A has been produced and proved on record. The number of days during the period the petitioner has rendered his services with the respondent is not disputed between the parties. Section 25-B clearly provides for the period of continuous service of one year as per Section 25-B Clause 2(a) which reads as follow:—

> "(2) where a workman is not in continuous service within the meaning of clause *(1)* for a period of one year or six months, he shall be deemed to be in continuous service under an employer—
>
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
>
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
>
> (ii) two hundred and forty days, in any other case;"

12. Section 25-F provides condition precedent to the retrenchment of a workman and the conditions mentioned therein are applicable only in respect of a workman who has been in continuous service for not less than one year under the employer. As already mentioned as per the provisions of Section 25-B Clause 2(a) of the Act there is mandatory requirement of completion of 240 days of work by the workman.

13. In the circumstances of the present case it is quite clear that petitioner has only worked for 191 days and he was disengaged. Though the petitioner has alleged that he was terminated from his services respondent has asserted that he had left the job out of his own free will. It is pertinent to mention here that no evidence appears to have been led on behalf of the respondent that they had issued any notice to the petitioner for non returning to the work however it is clear that Sections 25-F and 25-G of the Act are not applicable considering the period of work which have been contributed by the petitioner with the respondent. This is a peculiar situation when the petitioner after being allegedly disengaged from his services had raised a demand notice after expiry of more than 14 years. The disengagement of the petitioner does not falls within the definition of retrenchment after completion of specific number of days under Section 25-F of the Act. The petitioner has asserted that he had time and again made request to reinstate his services with the department but no documentary or oral evidence has been produced in this regard to support his contention. The petitioner has further asserted that the junior and similarly situated persons to the petitioner were working with the department and he had been ousted on account of pick and choose method of retrenchment. The principle of 'last come first go' was also violated. Again no evidence oral or documentary except the bald statement of the petitioner appears in this regard. The petitioner has further mentioned that he was not having knowledge of his constitutional right and the delay in raising demand notice was due to ill health of his father. He has not produced any evidence on case file to show that after the year 2000 he has made any efforts to approach the respondent requesting him to reinstate him in his service neither he raised any demand notice during within reasonable period. Document Ext. RW1/B which is the seniority list of daily wager beldars in respect of Dharampur Division having completed eight years upto 31.3.2018 has been

produced by the respondent. Careful perusal of the above record the beldars who had been appointed in the year 1998 were subjected to regularization in the year 2008. There is no record of any junior of the petitioner being regularized in violation of the principle of the Act. As already mentioned above the disengagement of the petitioner cannot be alleged to be due to illegal act on behalf of the respondent and they were not required to comply with the provisions of Section 25-F and 25-G of the Act considering the period for which the services have been rendered by the petitioner. Thus issues no. 1 and 2 are decided in favour of the respondent.

*Issues no. 3 and 4*

14. The reference which has been made before this court was not only qua alleged illegal termination of the services of the petitioner but also with regard to delay and laches of more than 14 years on behalf of the petitioner. The claim of the petitioner is regarding his services with the respondent in the year 2000. The demand notice was made in the year 2014. There is statement on behalf of the petitioner that his father was ill due to which he could not raise demand in the period of 14 years. No medical record of his father is produced by him. He had also mentioned that persons junior to him were regularized and he specifically raised demand notice since other persons contemporary to him were ordered to be regularized by the direction of the court. These averments made in the petition as well as affidavit of the petitioner are not supported and corroborated in any documentary or oral evidence in the case file. Hon'ble Supreme Court in **Kuldeep Singh vs G.M.Instrument Design D&F; Center SLP Civil No. 4137 of 2007** decided on 3 December, 2010 has also held in para no.21 "Even though, there is no limitation prescribed for reference of dispute to the Labour Court/Industrial Tribunal, even so, it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly, when disputes relate to discharge of workman. If sufficient materials are not put forth for the enormous delay, it would certainly be fatal.

15. In the present case also no substantial documentary evidence could be produced by the petitioner to establish that he was continuously approaching the respondent requesting them to reinstate his services since the time of his disengagement. Thus the reasons for the delay cited by the petitioner are not further supported and corroborated from oral and documentary evidence hence the present petition is not maintainable and claim of the petitioner suffers from unexplained delay and laches. Hence both these issues are decided against the petitioner.

*Relief*

16. In view of my discussion on the issues no. 1 to 4 above, the claim petition deserves no merits and is accordingly dismissed. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 6th day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. :121/2019

Date of Institution :15.11.2019

Date of Decision : 15.7.2024

Shri Ishwar Singh s/o Shri Baman Singh, r/o Village Bair, P.O. Tilli, Tehsil Sadar, District Mandi, H.P. . . *Petitioner*.

*Versus*

The Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited Mandi, District Mandi, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Neeraj Bhadnagar, Ld. Adv.

For Respondent : Sh. Anand Sharma, Ld. Adv.

**AWARD**

The following reference has been received by this court for adjudication by the appropriate Government/Deputy Labour Commissioner.

"I. Whether termination of daily wages services of Shri Ishwar Singh s/o Shri Baman Singh, r/o Village Bair, P.O. Tilli, Tehsil Sadar, District Mandi, H.P. by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited Mandi, District Mandi, H.P. *w.e.f.* 24.11.1994, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of service benefits, back wages, seniority and compensation the above workman is entitled to under the Industrial Disputes Act, 1947?"

II. "Whether the dispute raised by the petitioner Shri Ishwar Singh s/o Shri Baman Singh, r/o Village Bair, P.O. Tilli, Tehsil Sadar, District Mandi, H.p. regarding illegal termination of his daily wages services *w.e.f.* 24.11.1994 vide demand notice dated 08-07-2016 suffers from long delay and laches? If yes, what are its consequences? If not, what kind of relief he is entitled to?"

2. The brief facts as stated in the claim petition are that petitioner was engaged as a beldar on daily wage basis on 25.1.1992 by the respondent Board till 25.11.1994. It is alleged that the services of the petitioner were terminated orally on 25.11.1994 in violation of Sections 25-F, 25-G and 25-H of the Industrial disputes Act,1947 (hereinafter referred to as the 'the Act' for short) which is not permissible under the law. The aforesaid action of the respondent is alleged to be arbitrary and illegal. According to petitioner he time and again visited office of respondent with the prayer, that since he has worked on daily wage basis he should be reinstated in service with all consequential benefits but the authority did not pay heed to his request. It is also alleged that in the same year *i.e.* 1994 the Board has retained the junior persons but the petitioner who was engaged on 25.1.1992 was terminated and not reinstated without justification. The petitioner time and again

visited office of the respondent making a prayer for his reinstatement and consequential benefits but despite oral assurances he was not reinstated. When the respondent did not accede to the request of the petitioner, he preferred CWP No. 8348/2012 before the Hon'ble High Court of Himachal Pradesh. The department however did not reinstate the petitioner in terms of judgment passed by Hon'ble High Court in CWP 8348/2012, however, the posts were notified to be filled up by engaging fresh hands. The petitioner again approached the Hon'ble High Court of H.P. *vide* CWP No.3337/2015 which was dismissed and withdrawn on 11.4.2016 with liberty to seek appropriate remedy. Thereafter in the light of liberty granted by Hon'ble High Court the petitioner again filed a demand notice on 5.7.2016 before Labour Commissioner Shimla, but the said authority has not considered the case of the petitioner and same was rejected on 26.7.2017. Thereafter, petitioner had assailed the order dated 26.7.2017 by way of CWP No. 2056/2017 before Hon'ble High Court and the same was decided on 13.9.2017. It is further submitted that on 21.12.2017 Labour Commissioner passed an order whereby the claim of the petitioner was rejected and the petitioner filed CWP No. 2124/2018 before Hon'ble High Court of H.P. which was decided in favour of the petitioner on 18.9.2018. The respondents were directed to consider and decide the petitioner's representation within time bound manner. The Labour Commissioner, Shimla has passed an order dated 31.12.2018 rejecting the claim of the petitioner allegedly without any justification. Feeling aggrieved with the above order the petitioner again preferred a Civil Writ Petition No.1379/2019 before the Hon'ble High Court of H.P. which was decided on 4.9.2019 whereby the Hon'ble High Court had pleased to pass an order whereby the appropriate Government was directed to make reference of dispute including the question as to whether the petitioner is entitled to any relief and with reference to delay and laches on his part and as to whether the petitioner has completed 240 days in a period of 12 calendar months or not.

3. Thus the petitioner has prayed that since his services were terminated in violation of Sections 25-F, 25-G and 25-H of the Act he may be reinstated in service with full back wages holding termination order as wrong and illegal. He also prayed that benefits of period during which he remained under termination may be awarded in his favour *i.e.* consequential service benefits, seniority, arrears of difference of wages etc.

4. Respondents no.1 and 2 by way of reply raised preliminary objections qua cause of action, locus standi, suppression of material facts and the claim of petitioner being barred by limitation. It was asserted that there was no industrial dispute between the petitioner and respondents as petitioner never completed the requisite number of 240 days of work in any calendar year. The petitioner did not fall within the definition of temporary workman as per provisions of the Act. It was asserted in reply that the petitioner rendered his service *w.e.f.* 25.1.1992 to 24.11.1994 for a total 234 days only. The copy of mandays chart pertaining to the petitioner have been produced and it is asserted that petitioner left the job out of his own sweet will without any notice and intimation to the respondents. Thus petitioner did not complete 240 days in a calendar year consequently no industrial dispute existed between the parties. Respondents denied terminating the services of the petitioner and also asserted that at present there was no work available with the replying respondents and thus the services of the petitioner were not required. It is also alleged that petitioner remained in deep slumber for number of years and approached this Tribunal at belated stage. Thus claim of the petitioner was totally barred by limitation. The claim petition/demand notice is alleged to be suffering from unwarranted delay and laches and hence not maintainable. The other averments leading to litigation raised by the petitioner before the Hon'ble High Court and consequent reference of dispute made by the appropriate government have not been denied though it is time and again reiterated that the petitioner had not complete mandatory 240 days of work in any calendar year. Other averments made in the petition have denied and it was prayed that the claim petition be dismissed.

5. In rejoinder the preliminary objections raised by the respondents were denied and the facts stated in the claim petition were reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of the petitioner by the respondent *w.e.f.* 24.11.1994 is/was illegal and unjustified as alleged? . *OPP*.

2. If issue no.1 is proved in affirmative, to what benefit, the petitioner is entitled to? . . *OPP*.

3. Whether the dispute raised by the petitioner regarding his illegal termination *w.e.f.* 24.11.1994 vide demand notice dated 8.7.2016 is suffered from the vice of delay and laches. If so, its effect? . . *OPP*.

4. Whether the petitioner has no locus standi to file the present case as alleged? . . *OPR*.

5. Whether the petitioner has not come to the court with clean hands and suppressed the material facts from the court as alleged? . . *OPR*.

6. Whether the claim petition is time barred, as alleged? . . *OPR*.

Relief

7. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the averments made in the pleadings. Petitioner also produced on record copy of judgment dated 1.10.2012 of Hon'ble High Court Ext. P1, copy of letter Ext. P2, copy of reference Ext. P3, copy representation Ext. P4, copy of judgment of Hon'ble High Court Ext. P5, copy of judgment of Hon'ble Apex Court Ext. P6, copy of judgment of Hon'ble High Court Ext. P7, request of engagement Ext. P8, another request Ext. P9 and copy of judgment of Hon'ble High Court Ext. P10.

8. Respondents have examined Shri Rajesh Kumar, Senior Executive Engineer, HPSEBL, Mandi on oath by way affidavit RW-1, he has produced on record mandays chart Ext. R-1.

9. I have heard the learned Counsel for the petitioner for both the partiesat length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|---|---|
| Issue No.1 | : No |
| Issue No.2 | : decided accordingly |
| Issue No.3 | : No |
| Issue No.4 | : Yes |
| Issue No.5 | : Yes |
| Issue No.6 | : No |
| Relief | : Claim petition is dismissed peroperative portion of the Award. |

**REASONS FOR FINDINGS**

*Issue No.1 & 2*

11. Both these issues are taken up together for the purpose of adjudication.

12. At the very outset it is important to recollect the important part of the judgment passed by Hon'ble High Court of H.P. in CWP No.1379 of 2019 as follows:—

> ".....7. Therefore, the writ petition is allowed, impugned order is set aside and the Government is directed to make a reference of the dispute. It shall include the questions as to whether the petitioner would be entitled to any relief and if so with reference to delay and laches on his part and as to whether the petitioner has completed 240 days of continuous service in a period of twelve calendar months or not".

13. Thus this court had primary point for consideration whether the petitioner has completed 240 days of continuous service in a period of twelve calendar months or not.

14. The petitioner has stated in the pleadings that he had been engaged on daily wage basis on 25.1.1992 by the respondent Board till 25.11.1994. It is however the averments made in the pleadings by the respondents that petitioner had rendered his services *w.e.f.* 25.1.1992 to 25.11.1994. It is further alleged on behalf of the petitioner that his services were terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner in his cross-examination has denied that he has never worked for minimum period of 240 days and also denied that he had worked only for 234 days. It is settled law that onus to prove working of 240 days continuous service initially is on the petitioner/workman. RW1, Rajesh Kumar, Senior Executive Engineer, HPSEBL has deposed on oath that the petitioner worked from 25.1.1992 to 24.11.1994. The mandays chart Ext. R1 has been produced on the case file.

15. Hon'ble Supreme Court of India in **Krishna BhagyaJala Nigam Ltd. Versus Mohammed Rafi (DB)** in **CIVIL APPEAL NO. 2895 OF 2009** has held in paras no. 6,8,9,10 and 11 as follows:-

> "6. In a large number of cases the position of law relating to the onus to be discharged has been delineated. In Range Forest Officer *v.* S.T. Hadimani (2002 (3) SCC 25), it was held as follows: 4 "2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10.8.1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year. 3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat *v.* PratamsinghNarsinhParmar (2001) 9 SCC 713. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the

year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in 5 getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today." 7. The said decision was followed in Essen Deinki v. Rajiv Kumar (2002 (8) SCC 400).

8. In Rajasthan State Ganganagar S. Mills Ltd. *v.* State of Rajasthan and Anr. (2004 (8) SCC 161), the position was again reiterated in paragraph 6 as follows: "It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked upto 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer *v.* S.T. Hadimani (2002 (3) SCC 25). No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed."

9. In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad *v.* Siri Niwas JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-sproduction of certain relevant documents. This is what this Court had to say in that regard: "A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because 7 notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent." 10. In Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors. (2005(5) SCC 100) a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In Batala Cooperative Sugar Mills Ltd. *v.* Sowaran Singh (2005 (7) Supreme 165) it

was held as follows: "So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer *v.* S.T. Hadimani (2002 (3) SCC 25) the onus is on the workman." The position was examined in detail in Surendranagar District Panchayat v. DehyabhaiAmarsingh (2005 (7) Supreme 307) and the view expressed in Range Forest Officer, Siri Niwas, M.P. Electricity Board cases (supra) was reiterated.

16. The petitioner has not produced any other oral and documentary evidence to establish that he had completed one year continuous service as provided under Section 25-B of the Act. The petitioner except his statement by way of affidavit has not produced any other evidence to show that he has worked from 25.1.1992 till 24.11.1994. No payment receipts of wages etc. are on record. On the contrary the respondents have produced the mandays chart Ext. R-1 which has been proved before the court without any objection being raised on behalf of the petitioner. Non production of attendance register does not force this court to derive an adverse inference against the respondent. It is held by Hon'ble Supreme Court in **R.M. Yellatti v. The Asst. Executive Engineer, AIR 2006 SC 355.**

"In R.M. Yellatti *v*. The Asst. Executive Engineer (JT 2005 (9) SC 340), the decisions referred to above were noted and it was held as follows: "Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court 9 under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

17. Contention of the petitioner that despite his willingness to work he had not been engaged by the respondent whereas persons junior to him have been engaged and regularized are denied by the respondents. No corroborative evidence oral documentary could be produced by the petitioner to substantiate these allegation nor leave of this court was sought directing the respondent to produce the record pertaining to the services of the persons which has been alleged to have been regularized by the respondents.

18. The petitioner has also failed to prove that he had worked for 240 days in continuous service in a period of 12 months preceding his alleged termination or disengagement. Thus the disengagement of the petitioner does not violate Sections 25-G and 25-H of the Act. There is no evidence produced by the petitioner in support of his contention that he had worked till the year

1999. It is hence established that disengagement intend that terms of service of the petitioner was not in violation of provisions of Section 25-F and did not amount to retrenchment. The petitioner has not completed one year of continuous service at the time of disengagement. In the light of the above discussion it cannot be held that termination of services of the petitioner by the respondents was illegal and unjustified. Consequently, the petitioner is not entitled to any relief as prayed in the claim petition. Issues No.1 and 2 are decided in favour of the respondents.

*Issues no. 3 and 6*

19. Both these issues are taken up together for the purpose of adjudication.

20. The dispute was raised by the petitioner regarding his termination vide demand notice dated 8.7.2016. Prior to this as pleaded by the petitioner was time and again visiting the office of the respondent with a prayer that he may be reinstated in service with all the consequential benefits. He also asserted that he was given assurance that his service will be reinstated. Since no action was taken by the respondent and neither he was reinstated in service, he was constrained to file CWP No. 8348/2012 before the Hon'ble High Court which was decided by the Hon'ble High Court in his favour. Subsequently he had approached the Hon'ble High Court vide CWP No. 8342/2012, CWP No. 3337/2015, CWP No. 2056/2017, CWP No. 2124/2018 and CWP No.1379/2019. Consequent to the above struggle of the petitioner the present reference was made before this court by the appropriate Government.

21. Hon'ble High Court in **Krishan Pal vs. State of Himachal Pradesh and Anr. 2023 Latest Caselaw 3439 HP** has clearly laid down the terms and conditions on the basis of which the claim of a workman can be judged to be barred by limitation delay and laches etc. Hon'ble High Court has subsequent observed in para no.8 as follows:—

"8. Hon'ble Apex Court in case titled Prabhakar *v.* Joint Director Sericulture Department and Anr., AIR 2016 Supreme Court 2984, has held that dispute, if any, raised after an inordinate delay cannot be said to exist and there is no live dispute. In the aforesaid judgment, Hon'ble Apex Court has held that if dispute is raised after a long period, it has to be seen as to whether such a dispute still exists or not? In such case, law of limitation does not apply, rather it is to be shown by the workman that there is a dispute in praesenti. If the workman is able to give satisfactory explanation for the laches and delays and demonstrates that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, because of such delay, if dispute no longer remains alive and is to be treated as dead, then it would be non-existent dispute which cannot be referred. Most importantly, in the aforesaid judgment, Hon'ble Apex Court has held that in those cases where court finds that dispute still existed, though raised belatedly, it is always for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement.

Relevant para of the afore judgment reads as under:

"40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an

opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the

termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

22. In these circumstances of the present case also the contention of the petitioner that after his disengagement, he time and again visited the office of the respondents and requested themto reinstate him was not specifically denied by the respondents though they denied existence of an industrial dispute between the parties. Thereafter since 2012 upto 2019 the petitioner was approaching the Hon'ble High Court with regard to his grievances. In these circumstances it cannot be held that the dispute between the petitioner and respondent cease to exist with the lapse of time. In the light of above circumstances it cannot be held that claim of the petitioner was suffered from delay and laches or was barred by limitation even though he had failed to establish his claim in accordance with the provisions of the Industrial Disputes Act. Accordingly issues no.3 and 6 are decided in favour of the petitioner.

*Issues No.4 and 5*

23. The onus of proof these issues on the respondent. The respondents have produced on record the mandays chart of the petitioner. This documentary evidence was not rebutted on behalf of the petitioner. No other oral or documentary evidence could be produced to show that petitioner has worked for continuous period of 240 days in 12 month preceding his alleged disengagement. In these circumstances the petitioner had no locus standi to prefer the claim petition moreover considering the number of days which are calculated on 234 with respect to his service rendered he had not approached the court with clean hands and suppressed the material facts. Accordingly issues no.4 and 5 are decided in favour of the respondent.

*Relief*

24. In view of my discussion on the issues no. 1, 2, 4 and 5 above, the present claim petition is not maintainable and is accordingly dismissed. Parties are left to bear their costs.

25. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. :122/2019

Date of Institution : 15.11.2019

Date of Decision : 15.7.2024

Shri Inder Singh s/o Late Shri Mohan Singh, r/o Village Dharta, P.O. Tilli, Tehsil Sadar, District Mandi, H.P. . . *Petitioner*.

*Versus*

The Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited Mandi, District Mandi, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Neeraj Bhadnagar, Ld. Adv.
For Respondent : Sh. Anand Sharma, Ld. Adv.

**AWARD**

The following reference has been received by this court for adjudication by the appropriate Government/Deputy Labour Commissioner.

"I. Whether termination of daily wages services of Shri Inder Singh s/o Late Shri Mohan Singh, r/o Village Dharta, P.O. Tilli, Tehsil Sadar, District Mandi, H.P. by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited Mandi, District Mandi, H.P. *w.e.f.* 24-04-1999, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of service benefits, back wages, seniority and compensation the above workman is entitled to under the Industrial Disputes Act, 1947?"

II. "Whether the dispute raised by the petitioner Shri Inder Singh s/o Late Shri Mohan Singh, r/o Village Dharta, P.O. Tilli, Tehsil Sadar, District Mandi, H.P. regarding illegal termination of his daily wages services *w.e.f.* 24-04-1999 vide demand notice dated 08-07-2016 suffers from long delay and laches? If yes, what are its consequences? If not, what kind of relief he is entitled to?"

2. The brief facts as stated in the claim petition are that petitioner was engaged as a beldar on daily wage basis on 25.12.1997 by the respondent Board till 24.4.1999. It is alleged that the services of the petitioner were terminated orally in violation of Sections 25-F, 25-G and 25-H of the Industrial disputes Act,1947 (hereinafter referred to as the 'the Act' for short) which is not permissible under the law. The aforesaid action of the respondent is alleged to be arbitrary and illegal. According to petitioner he time and again visited office of respondent with the prayer, that since he has worked on daily wage basis he should be reinstated in service with all consequential benefits but the authority did not pay heed to his request. It is also alleged that in the same year *i.e.* 1998 the Board has retained the junior persons but the services of petitioner who was engaged on 25.12.1997 was terminated and not reinstated without justification. The petitioner time and again visited office of the respondent making a prayer for his reinstatement and consequential benefits

but despite oral assurances he was not reinstated. When the respondent did not accede to the request of the petitioner, he preferred CWP No.8356/2012 before the Hon'ble High Court of Himachal Pradesh. The department however did not reinstate the petitioner in terms of judgment passed by Hon'ble High Court in CWP 8356/2012, however, the posts were notified to be filled up by engaging fresh hands. The petitioner again approached the Hon'ble High Court of H.P. *vide* CWP No.81/2015 which was dismissed and withdrawn on 11.4.2016 with liberty to seek appropriate remedy. Thereafter in the light of liberty granted by Hon'ble High Court the petitioner again filed a demand notice on 5.7.2016 before Labour Commissioner Shimla, but the said authority has not considered the case of the petitioner and same was rejected on 26.7.2017. Thereafter, petitioner had assailed the order dated 26.7.2017 by way of CWP No. 2060/2017 before Hon'ble High Court and the same was decided on 14.9.2017. It is further submitted that on 21.12.2017 Labour Commissioner passed an order whereby the claim of the petitioner was rejected and the petitioner filed CWP No.2190/2018 before Hon'ble High Court of H.P. which was decided in favour of the petitioner on 24.9.2018. The respondents were directed to consider and decide the petitioner's representation within time bound manner. The Labour Commissioner, Shimla has passed an order dated 31.12.2018 rejecting the claim of the petitioner allegedly without any justification. Feeling aggrieved with the above order the petitioner again preferred a Civil Writ Petition No.1380/2019 before the Hon'ble High Court of H.P. which was decided on 4.9.2019 whereby the Hon'ble High Court was pleased to pass and order whereby the appropriate Government was directed to make reference of dispute including the question as to whether the petitioner is entitled to any relief and with reference to delay and laches on his part and as to whether the petitioner has completed 240 days in a period of 12 calendar months or not.

3. Thus the petitioner has prayed that since his services were terminated in violation of Sections 25-F, 25-G and 25-H of the Act he may be reinstated in service with full back wages holding termination order as wrong and illegal. He also prayed that benefits of period during which he remained under termination may be awarded in his favour i.e. consequential service benefits, seniority, arrears of difference of wages etc.

4. Respondents no.1 and 2 by way of reply raised preliminary objections qua cause of action, locus standi, suppression of material facts and the claim of petitioner being barred by limitation. It was asserted that there was no industrial dispute between the petitioner and respondents as petitioner never completed the requisite number of 240 days of work in any calendar year. The petitioner did not fall within the definition of temporary workman as per provisions of the Act. It was asserted in reply that the petitioner rendered his service *w.e.f.* 25.12.1997 to 24.4.1999 for a total 335 days only. The copy of mandays chart pertaining to the petitioner have been produced and it is asserted that petitioner left the job out of his own sweet will without any notice and intimation to the respondents. Thus petitioner did not complete 240 days in a calendar year consequently no industrial dispute existed between the parties. Respondents denied terminating the services of the petitioner and also asserted that at present there was no work available with the replying respondents and thus the services of the petitioner were not required. It is also alleged that petitioner remained in deep slumber for number of years and approached this Tribunal at belated stage. Thus claim of the petitioner was totally barred by limitation. The claim petition/demand notice is alleged to be suffering from unwarranted delay and laches and hence not maintainable. The other averments leading to litigation raised by the petitioner before the Hon'ble High Court and consequent reference of dispute made by the appropriate government have not been denied though it is time and again reiterated that the petitioner had not complete mandatory 240 days of work in any calendar year. Other averments made in the petition have denied and it was prayed that the claim petition be dismissed.

5. In rejoinder the preliminary objections raised by the respondents were denied and the facts stated in the claim petition were reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of the petitioner by the respondent *w.e.f.* 24.04.1999 is/was illegal and unjustified as alleged? . . *OPP.*

2. If issue no.1 is proved in affirmative, to what benefit, the petitioner is entitled to? . . *OPP.*

3. Whether the dispute raised by the petitioner regarding his illegal termination *w.e.f.* 24.04.1999 vide demand notice dated 8.7.2016 is suffered from the vice of delay and laches. If so, its effect? . . *OPP.*

4. Whether the petitioner has no locus standi to file the present case as alleged? . . *OPR.*

5. Whether the petitioner has not come to the court with clean hands and suppressed the material facts from the court as alleged? . . *OPR.*

6. Whether the claim petition is time barred, as alleged? . . *OPR.*

Relief

7. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the averments made in the pleadings. Petitioner also produced on record copy of judgment of Hon'ble High Court Ext. P1, copy of order dated December, 2018 Ext. P2, copy of judgment of Hon'ble Apex Court Ext. P3, copy of reply Ext. P4, copy of order of Deputy Labour Commissioner Ext. P5, copy of judgment of Hon'ble High Court Ext. P6, copy of request letter Ext. P7 and copy of judgment of Hon'ble High Court Ext. P8.

8. Respondents have examined Shri Rajesh Kumar, Senior Executive Engineer, HPSEBL, Mandi on oath by way affidavit RW-1, he has produced on record mandays chart Ext. R-1.

9. I have heard the learned Counsel for the petitioner for both the parties at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No. 2 : decided accordingly

Issue No. 3 : No

Issue No. 4 : Yes

Issue No. 5 : Yes

Issue No. 6 : No

Relief : Claim petition is dismissed peroperative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.1 & 2*

11. Both these issues are taken up together for the purpose of adjudication.

12. At the very outset it is important to recollect the important part of the judgment passed by Hon'ble High Court of H.P. in CWP No.1380 of 2019 as follows:-

> ".....7. Therefore, the writ petition is allowed, impugned order is set aside and the Government is directed to make a reference of the dispute. It shall include the questions as to whether the petitioner would be entitled to any relief and if so with reference to delay and laches on his part and as to whether the petitioner has completed 240 days of continuous service in a period of twelve calendar months or not".

13. Thus this court had primary point for consideration whether the petitioner has completed 240 days of continuous service in a period of twelve calendar months or not.

14. The petitioner has stated in the pleadings that he had been engaged on daily wage basis on 25.12.1997 by the respondent Board till 24.4.1999. It is however the averments made in the pleadings by the respondents that petitioner had rendered his services w.e.f. 25.12.1997 to 24.5.1999. It is further alleged on behalf of the petitioner that his services were terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner in his cross-examination has denied that he has never worked for minimum period of 240 days and also denied that he had worked only for 335 days. It is settled law that onus to prove working of 240 days continuous service initially is on the petitioner/workman. RW1, Rajesh Kumar, Senior Executive Engineer, HPSEBL has deposed on oath that the petitioner worked from 25.12.1997 to 24.4.1994. The mandays chart Ext. R1 has been produced on the case file.

15. Hon'ble Supreme Court of India in **Krishna Bhagya Jala Nigam Ltd. Versus Mohammed Rafi (DB)** in **CIVIL APPEAL NO. 2895 OF 2009** has held in paras no. 6,8,9,10 and 11 as follows:—

> "6. In a large number of cases the position of law relating to the onus to be discharged has been delineated. In Range Forest Officer *v.* S.T. Hadimani (2002 (3) SCC 25), it was held as follows: 4 "2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10.8.1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year. 3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar (2001) 9 SCC 713. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the

year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in 5 getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today." 7. The said decision was followed in Essen Deinki v. Rajiv Kumar (2002 (8) SCC 400).

8. In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004 (8) SCC 161), the position was again reiterated in paragraph 6 as follows: "It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked upto 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer *v.* S.T. Hadimani (2002 (3) SCC 25). No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed."

9. In Municipal Corporation, Faridabad *v.* Siri Niwas (2004 (8) SCC 195), it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad v. Siri Niwas JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard: "A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because 7 notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent." 10. In Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors. (2005(5) SCC 100) a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In Batala Cooperative Sugar Mills Ltd. *v.* Sowaran Singh (2005 (7) Supreme 165) it

was held as follows: "So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) the onus is on the workman." The position was examined in detail in Surendranagar District Panchayat *v.* Dehyabhai Amarsingh (2005 (7) Supreme 307) and the view expressed in Range Forest Officer, Siri Niwas, M.P. Electricity Board cases (supra) was reiterated.

16. The petitioner has not produced any other oral and documentary evidence to establish that he had completed one year continuous service as provided under Section 25-B of the Act. The petitioner except his statement by way of affidavit has not produced any other evidence to show that he has worked from 25.12.1997 till 24.4.1999. No payment receipts of wages etc. are on record. On the contrary the respondents have produced the mandays chart Ext. R-1 which has been proved before the court without any objection being raised on behalf of the petitioner. Non production of attendance register does not force this court to derive an adverse inference against the respondent. It is held by Hon'ble Supreme Court in **R.M. Yellatti v. The Asst. Executive Engineer, AIR 2006 SC 355.**

"In R.M. Yellatti *v.* The Asst. Executive Engineer (JT 2005 (9) SC 340), the decisions referred to above were noted and it was held as follows: "Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court 9 under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

17. Contention of the petitioner that despite his willingness to work he had not been engaged by the respondent whereas persons junior to him have been engaged and regularized are denied by the respondents. No corroborative evidence oral documentary could be produced by the petitioner to substantiate these allegation nor leave of this court was sought directing the respondent to produce the record pertaining to the services of the persons which has been alleged to have been regularized by the respondents.

18. The petitioner has also failed to prove that he had worked for 240 days in continuous service in a period of 12 months preceding his alleged termination or disengagement. Thus the disengagement of the petitioner does not violate Sections 25-G and 25-H of the Act. There is no evidence produced by the petitioner in support of his contention that he had worked till the year

1999. It is hence established that disengagement of service of the petitioner was not in violation of provisions of Section 25-F and did not amount to retrenchment. The petitioner has not completed one year of continuous service at the time of disengagement. In the light of the above discussion it cannot be held that termination of services of the petitioner by the respondents was illegal and unjustified. Consequently, the petitioner is not entitled to any relief as prayed in the claim petition. Issues No.1 and 2 are decided in favour of the respondents.

*Issues no. 3 and 6*

19. Both these issues are taken up together for the purpose of adjudication.

20. The dispute was raised by the petitioner regarding his termination vide demand notice dated 8.7.2016. Prior to this as pleaded by the petitioner he has time and again visited the office of the respondent with a prayer that he may be reinstated in service with all the consequential benefits. He also asserted that he was given assurance that his service will be reinstated. Since no action was taken by the respondent and neither he was reinstated in service,he was constrained to file CWP No.8356/2012 before the Hon'ble High Court which was decided by the Hon'ble High Court in his favour. Subsequently he had approached the Hon'ble High Court vide CWP No.8356/2012, CWP No.81/2015, CWP No.2060/2017, CWP No.2190/2018 and CWP No.1380/2019. Consequent to the above struggle of the petitioner the present reference was made before this court by the appropriate Government.

21. Hon'ble High Court in **Krishan Pal vs. State of Himachal Pradesh and Anr. 2023 Latest Caselaw 3439 HP** has clearly laid down the terms and conditions on the basis of which the claim of a workman can be judged to be barred by limitation delay and laches etc. Hon'ble High Court has subsequent observed in para no.8 as follows:—

> "8. Hon'ble Apex Court in case titled Prabhakar *v.* Joint Director Sericulture Department and Anr., AIR 2016 Supreme Court 2984, has held that dispute, if any, raised after an inordinate delay cannot be said to exist and there is no live dispute. In the aforesaid judgment, Hon'ble Apex Court has held that if dispute is raised after a long period, it has to be seen as to whether such a dispute still exists or not? In such case, law of limitation does not apply, rather it is to be shown by the workman that there is a dispute in praesenti. If the workman is able to give satisfactory explanation for the laches and delays and demonstrates that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, because of such delay, if dispute no longer remains alive and is to be treated as dead, then it would be non-existent dispute which cannot be referred. Most importantly, in the aforesaid judgment, Hon'ble Apex Court has held that in those cases where court finds that dispute still existed, though raised belatedly, it is always for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement.
>
> Relevant para of the afore judgment reads as under:
>
> "40) On the basis of aforesaid discussion, we summarise the legal position as under:
>
> An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. reference is made under Section 10 of the Act in those cases where the appropriate Government forms an

opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the

termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

22. In these circumstances of the present case also the contention of the petitioner that after his disengagement, he time and again visited the office of the respondents and requested them to reinstate him was not specifically denied by the respondents though they denied existence of an industrial dispute between the parties. Thereafter since 2012 upto 2019 the petitioner was approaching the Hon'ble High Court with regard to his grievances. In these circumstances it cannot be held that the dispute between the petitioner and respondent cease to exist with the lapse of time. In the light of above circumstances it cannot be held that claim of the petitioner was suffered from delay and laches or was barred by limitation even though he had failed to establish his claim in accordance with the provisions of the Industrial Disputes Act. Accordingly issues no.3 and 6 are decided in favour of the petitioner.

*Issues No. 4 and 5*

23. The onus of proof these issues on the respondent. The respondents have produced on record the mandays chart of the petitioner. This documentary evidence was not rebutted on behalf of the petitioner. No other oral or documentary evidence could be produced to show that petitioner has worked for continuous period of 240 days in 12 month preceding his alleged disengagement. In these circumstances the petitioner had no locus standi to prefer the claim petition moreover considering the number of days which are calculated on 159 with respect to his service rendered he had not approached the court with clean hands and suppressed the material facts. Accordingly issues no.4 and 5 are decided in favour of the respondent.

*Relief*

24. In view of my discussion on the issues no. 1, 2, 4 and 5 above, the present claim petition is not maintainable and is accordingly dismissed. Parties are left to bear their costs.

25. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 124/2019

Date of Institution : 15.11.2019

Date of Decision : 15.7.2024

Shri Jaswant Singh s/o Shri Partap Singh, r/o Village Janed, P.O. Marathu, Tehsil Sadar, District Mandi, H.P. . . *Petitioner*.

*Versus*

The Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited Mandi, District Mandi, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Neeraj Bhadnagar, Ld. Adv.

For Respondent : Sh. Anand Sharma, Ld. Adv.

**AWARD**

The following reference has been received by this court for adjudication by the appropriate Government/Deputy Labour Commissioner.

"I. Whether termination of daily wages services of Shri Jaswant Singh s/o Shri Partap Singh, r/o Village Janed, P.O. Marathu, Tehsil Sadar, District Mandi, H.P. by the Senior Executive Engineer, Electrical Division, H.P.S.E. B. Limited, District Mandi, H.P. *w.e.f.* 24.4.2000, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of service benefits, back wages, seniority and compensation the above workman is entitled to under the Industrial Disputes Act, 1947?"

II. Whether the dispute raised by the petitioner Shri Jaswant Singh s/o Shri Partap Singh, r/o Village Janed, P.O. Marathu, Tehsil Sadar, District Mandi, H.P. regarding illegal termination of his daily wages services *w.e.f.* 24.04.2000 *vide* demand notice dated 01.12.2016 suffers from long delay and laches? If yes, what are its consequences? If not, what kind of relief he entitled to?"

2. The brief facts as stated in the claim petition are that petitioner was engaged as a beldar on daily wage basis on 25.9.1999 by the respondent Board till 1.8.2002. It is alleged that the services of the petitioner were terminated orally on 1.8.2002 in violation of Sections 25-F, 25-G and 25-H of the Industrial disputes Act,1947 (hereinafter referred to as the 'the Act' for short) which is not permissible under the law. The aforesaid action of the respondent is alleged to be arbitrary and illegal. According to petitioner he time and again visited office of respondent with the prayer, that since he has worked on daily wage basis he should be reinstated in service with all consequential benefits but the authority did not pay heed to his request. It is also alleged that in the same year *i.e.* 2002 the Board has retained the junior persons but the petitioner who was engaged on 25.9.1999 was terminated and not reinstated without justification. The petitioner time and again

visited office of the respondent making a prayer for his reinstatement and consequential benefits but despite oral assurances he was not reinstated. When the respondent did not accede to the request of the petitioner, he preferred CWP No.9150/2012 before the Hon'ble High Court of Himachal Pradesh. The department however did not reinstate the petitioner in terms of judgment passed by Hon'ble High Court in CWP 9150/2012, however, the posts were notified to be filled up by engaging fresh hands. The petitioner again approached the Hon'ble High Court of H.P. vide CWP No.937/2016 which was dismissed and withdrawn on 11.4.2016 with liberty to seek appropriate remedy. Thereafter in the light of liberty granted by Hon'ble High Court the petitioner again filed a demand notice on 1.12.2016 before Labour Commissioner Shimla. The Labour Commissioner Shimla was bound to decide demand notice within 45 days but did not decide. The Labour Commissioner did not act as per law laid down by Hon'ble Apex Court in Basant Singh vs. State of H.P. and Ors. decided on 16.9.2019 and in Daler Khan vs. State of H.P., HLJ 2017 SC 1619 and thus the act of Labour Commissioner is alleged to be illegal arbitrary in the eyes of law. It is further submitted that on 21.12.2017 Labour Commissioner passed an order whereby the claim of the petitioner was rejected and the petitioner filed CWP No.2192/2018 before Hon'ble High Court of H.P. which was decided in favour of the petitioner on 24.9.2018. The respondents were directed to consider and decide the petitioner's representation within time bound manner. The Labour Commissioner, Shimla has passed an order dated 31.12.2018 rejecting the claim of the petitioner allegedly without any justification. Feeling aggrieved with the above order the petitioner again preferred a Civil Writ Petition No.1382/2019 before the Hon'ble High Court of H.P. which was decided on 4.9.2019 whereby the Hon'ble High Court had pleased to pass an order whereby the appropriate Government was directed to make reference of dispute including the question as to whether the petitioner is entitled to any relief and with reference to delay and laches on his part and as to whether the petitioner has completed 240 days in a period of 12 calendar months or not.

3. It is alleged that respondent Board having enough work and availability of funds and despite petitioner being willing to work in order to earn his livelihood did not re-engage the petitioner whereas the persons junior to the petitioner were engaged and allowed to complete 240 days in each calendar year and were subsequent regularized. It is also alleged that the respondent has violated the provisions of 'last come first go'. The petitioner remained unemployed from the date when his services were terminated without any justification and he was deprived of earning his livelihood. The act and conduct of the respondent is alleged to be done in bad faith in a colourable exercise of their powers and leading to victimization of the petitioner. Thus the petitioner has prayed that since his services were terminated in violation of Sections 25-F, 25-G and 25-H of the Act he may be reinstated in service with full back wages holding termination order as wrong and illegal. He also prayed that benefits of period during which he remained under termination may be awarded in his favour *i.e.* consequential service benefits, seniority, arrears of difference of wages etc.

4. Respondents no.1 to 3 by way of reply raised preliminary objections qua cause of action, locus standi, suppression of material facts and the claim of petitioner being barred by limitation. It was asserted that there was no industrial dispute between the petitioner and respondents as petitioner never completed the requisite number of 240 days of work in any calendar year. The petitioner did not fall within the definition of temporary workman as per provisions of the Act. It was asserted in reply that the petitioner rendered his service *w.e.f.* 25.12.1999 to 24.5.2000 for a total 159 days only. The copy of mandays chart pertaining to the petitioner have been produced and it is asserted that petitioner left the job out of his own sweet will without any notice and intimation to the respondents. Thus petitioner did not complete 240 days in a calendar year consequently no industrial dispute existed between the parties. Respondents denied terminating the services of the petitioner and also asserted that at present there was no work available with the replying respondents and thus the services of the petitioner were not required. It is also alleged that petitioner remained in deep slumber for number of years and approached this Tribunal at belated

stage. Thus claim of the petitioner was totally barred by limitation. The claim petition/demand notice is alleged to be suffering from unwarranted delay and laches and hence not maintainable. The other averments leading to litigation raised by the petitioner before the Hon'ble High Court and consequent reference of dispute made by the appropriate government have not been denied though it is time and again reiterated that the petitioner had not complete mandatory 240 days of work in any calendar year. Other averments made in the petition have denied and it was prayed that the claim petition be dismissed.

5. In rejoinder the preliminary objections raised by the respondents were denied and the facts stated in the claim petition were reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of the petitioner by the respondent *w.e.f.* 24.04.2000 is/was illegal and unjustified as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what benefit, the petitioner is entitled to? . . *OPP*.

3. Whether the dispute raised by the petitioner regarding his illegal termination *w.e.f.* 24.04.2000 *vide* demand notice dated 1.12.2016 is suffered from the vice of delay and laches. If so, its effect? . *OPP*.

4. Whether the petitioner has no locus standi to file the present case as alleged? . . *OPR*.

5. Whether the petitioner has not come to the court with clean hands and suppressed the material facts from the court as alleged? . . *OPR*.

6. Whether the claim petition is time barred, as alleged? . . *OPR*.

Relief.

7. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the averments made in the pleadings. Petitioner also produced on record letter dated 22.2.2003 Ext. P1, letter dated 18.2.2013 Ext. P2, copy of judgment of Hon'ble High Court Ext. P3, letter dated October, 2018 Ext. P4, copy of judgment of Hon'ble High Court Ext. P5, copy of another judgment of Hon'ble High Court Ext. P6, representation dated 28.9.2018 Ext. P7, copy of judgment of Hon'ble High Court Ext. P8, copy of reference Ext. P9, copy of request Ext. P10, copy of judgment of Hon'ble High Court Ext. P12, copy of order dated 2nd February 2019 Ext. P13, copy of intimation regarding filing of representation Ext. P14 and copy of judgment of Hon'ble High Court Ext. P15.

8. Respondents have examined Shri Rajesh Kumar, Senior Executive Engineer, HPSEBL, Mandi on oath by way affidavit RW-1, he has produced on record mandays chart Ext. R-1.

9. I have heard the learned Counsel for the petitioner for both the parties at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : decided accordingly

Issue No.3 : No

Issue No.4 : Yes

Issue No.5 : Yes

Issue No.6 : No

Relief : Claim petition is dismissed per operative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.1 & 2*

11. Both these issues are taken up together for the purpose of adjudication.

12. At the very outset it is important to recollect the important part of the judgment passed by Hon'ble High Court of H.P. in CWP No.1382 of 2019 as follows:—

> ".....7. Therefore, the writ petition is allowed, impugned order is set aside and the Government is directed to make a reference of the dispute. It shall include the questions as to whether the petitioner would be entitled to any relief and if so with reference to delay and laches on his part and as to whether the petitioner has completed 240 days of continuous service in a period of twelve calendar months or not".

13. Thus this court had primary point for consideration whether the petitioner has completed 240 days of continuous service in a period of twelve calendar months or not.

14. The petitioner has stated in the pleadings that he had been engaged on daily wage basis on 25.9.1999 by the respondent Board till 1.8.2002. It is however the averments made in the pleadings by the respondents that petitioner had rendered his services *w.e.f.* 25.12.1999 to 24.5.2000. It is further alleged on behalf of the petitioner that his services were terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner in his cross-examination has denied that he has never worked for minimum period of 240 days and also denied that he had worked only for 159 days. It is settled law that onus to prove working of 240 days continuous service initially is on the petitioner/workman. RW1, Rajesh Kumar, Senior Executive Engineer, HPSEBL has deposed on oath that the petitioner worked from December, 1999 to May, 2000 for a total of 159 days. The mandays chart Ext. R1 has been produced on the case file.

15. Hon'ble Supreme Court of India in **Krishna Bhagya Jala Nigam Ltd. Versus Mohammed Rafi (DB)** in **CIVIL APPEAL NO. 2895 OF 2009** has held in paras no. 6,8,9,10 and 11 as follows:—

> "6. In a large number of cases the position of law relating to the onus to be discharged has been delineated. In Range Forest Officer *v.* S.T. Hadimani (2002 (3) SCC 25), it was held as follows: 4 "2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without

paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10.8.1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year. 3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar (2001) 9 SCC 713. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in 5 getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today." 7. The said decision was followed in Essen Deinki v. Rajiv Kumar (2002 (8) SCC 400).

8. In Rajasthan State Ganganagar S. Mills Ltd. *v.* State of Rajasthan and Anr. (2004 (8) SCC 161), the position was again reiterated in paragraph 6 as follows: "It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked upto 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer *v.* S.T. Hadimani (2002 (3) SCC 25). No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed."

9. In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad v. Siri Niwas JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard: "A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best

evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because 7 notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent." 10. In Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors. (2005(5) SCC 100) a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh (2005 (7) Supreme 165) it was held as follows: "So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) the onus is on the workman." The position was examined in detail in Surendranagar District Panchayat v. Dehyabhai Amarsingh (2005 (7) Supreme 307) and the view expressed in Range Forest Officer, Siri Niwas, M.P. Electricity Board cases (supra) was reiterated.

16. The petitioner has not produced any other oral and documentary evidence to establish that he had completed one year continuous service as provided under Section 25-B of the Act. The petitioner except his statement by way of affidavit has not produced any other evidence to show that he has worked from 25.9.1999 till 1.8.2000. No payment receipts of wages etc. are on record. On the contrary the respondents have produced the mandays chart Ext. R-1 which has been proved before the court without any objection being raised on behalf of the petitioner. Non production of attendance register does not force this court to derive an adverse inference against the respondent. It is held by Hon'ble Supreme Court in **R.M. Yellatti v. The Asst. Executive Engineer, AIR 2006 SC 355.**

"In R.M. Yellatti *v.* The Asst. Executive Engineer (JT 2005 (9) SC 340), the decisions referred to above were noted and it was held as follows: "Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the

basic principle, namely, that the High Court 9 under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

17. Contention of the petitioner that despite his willingness to work he had not been engaged by the respondent whereas persons junior to him have been engaged and regularized are denied by the respondents. No corroborative evidence oral documentary could be produced by the petitioner to substantiate these allegation nor leave of this court was sought directing the respondent to produce the record pertaining to the services of the persons which has been alleged to have been regularized by the respondents.

18. The petitioner has also failed to prove that he had worked for 240 days in continuous service in a period of 12 months preceding his alleged termination or disengagement. Thus the disengagement of the petitioner does not violate Sections 25-G and 25-H of the Act. There is no evidence produced by the petitioner in support of his contention that he had worked till the year 2000. It is hence established that disengagement intend that terms of service of the petitioner was not in violation of provisions of Section 25-F and did not amount to retrenchment. The petitioner has not completed one year of continuous service at the time of disengagement. In the light of the above discussion it cannot be held that termination of services of the petitioner by the respondents was illegal and unjustified. Consequently, the petitioner is not entitled to any relief as prayed in the claim petition. Issues No.1 and 2 are decided in favour of the respondents.

*Issues no. 3 and 6*

19. Both these issues are taken up together for the purpose of adjudication.

20. The dispute was raised by the petitioner regarding his termination *vide* demand notice dated 1.12.2006. Prior to this as pleaded by the petitioner was time and again visiting the office of the respondent with a prayer that he may be reinstated in service with all the consequential benefits. He also asserted that he was given assurance that his service will be reinstated. Since no action was taken by the respondent and neither he was reinstated in service, he was constrained to file CWP No. 9150/2012 before the Hon'ble High Court which was decided by the Hon'ble High Court in his favour. Subsequently he had approached the Hon'ble High Court vide CWP No.937/2016, CWP No. 2192/2018, CWP No.1382/2019. Consequent to the above struggle of the petitioner the present reference was made before this court by the appropriate Government.

21. Hon'ble High Court in **Krishan Pal vs. State of Himachal Pradesh and Anr. 2023 Latest Caselaw 3439 HP** has clearly laid down the terms and conditions on the basis of which the claim of a workman can be judged to be barred by limitation delay and laches etc. Hon'ble High Court has subsequent observed in para no.8 as follows:—

"8. Hon'ble Apex Court in case titled Prabhakar *v.* Joint Director Sericulture Department and Anr., AIR 2016 Supreme Court 2984, has held that dispute, if any, raised after an inordinate delay cannot be said to exist and there is no live dispute. In the aforesaid judgment, Hon'ble Apex Court has held that if dispute is raised after a long period, it has to be seen as to whether such a dispute still exists or not? In such case, law of limitation does not apply, rather it is to be shown by the workman that there is a dispute in praesenti. If the workman is able to give satisfactory explanation for the laches and delays and demonstrates that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, because of such delay, if dispute no longer remains alive and is to be treated as dead, then it would be non-existent dispute which cannot be referred. Most importantly, in

the aforesaid judgment, Hon'ble Apex Court has held that in those cases where court finds that dispute still existed, though raised belatedly, it is always for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement.

Relevant para of the afore judgment reads as under:

"40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not

immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

22. In these circumstances of the present case also the contention of the petitioner that after his disengagement, he time and again visited the office of the respondents and requested them to reinstate him was not specifically denied by the respondents though they denied existence of an industrial dispute between the parties. Thereafter since 2012 upto 2019 the petitioner was approaching the Hon'ble High Court with regard to his grievances. In these circumstances it cannot be held that the dispute between the petitioner and respondent cease to exist with the lapse of time. In the light of above circumstances it cannot be held that claim of the petitioner was suffered from delay and laches or was barred by limitation even though he had failed to establish his claim in accordance with the provisions of the Industrial Disputes Act. Accordingly issues no. 3 and 6 are decided in favour of the petitioner.

*Issues No.4 and 5*

23. The onus of proof these issues on the respondent. The respondents have produced on record the mandays chart of the petitioner. This documentary evidence was not rebutted on behalf of the petitioner. No other oral or documentary evidence could be produced to show that petitioner has worked for continuous period of 240 days in 12 month preceding his alleged disengagement. In these circumstances the petitioner had no locus standi to prefer the claim petition moreover considering the number of days which are calculated on 159 with respect to his service rendered he had not approached the court with clean hands and suppressed the material facts. Accordingly issues no. 4 and 5 are decided in favour of the respondent.

*Relief*

24. In view of my discussion on the issues no. 1, 2, 4 and 5 above, the present claim petition is not maintainable and is accordingly dismissed. Parties are left to bear their costs.

25. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. :17/2019

Date of Institution : 15.11.2019

Date of Decision : 18.7.2024

Shri Pradeep Kumar s/o Shri Shayam Lal, r/o Village and Post Office Sarol, Tehsil and District Chamba, H.P. . . *Petitioner*.

*Versus*

The Deputy Director, Horticulture, Chamba, District Chamba, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, Ld. AR.

For Respondent : Sh. Gaurav Keshav, Ld. ADA

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner.

"Whether the alleged termination of daily wages services of Shri Pradeep Kumar s/o Shri Shayam Lal, r/o Village and Post Office Sarol, Tehsil and District Chamba, H.P. from time to time during year, 2006 to August, 2017 & finally terminated his services by the Deputy Director, Horticulture, Chamba, District Chamba, H.P. during the August, 2017, as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that petitioner was engaged as daily wage beldar on muster roll basis by the respondent department in PCDO Sarol in June, 2006. It is further submitted that he has continuously worked with intermittent/artificial breaks with the respondent department. It is alleged that during August, 2017 the department had orally terminated the services of the petitioner without any reason whereas the workmen junior to the petitioner were kept/retained in service continuously by the respondent department and their services have been regularized at the cost of the petitioner. Petitioner has made request with the officers of the respondent department not to change service condition from muster roll basis to contract basis however no action was taken by the respondent. It is alleged that respondent department intentionally provided work to petitioner for a short terms/spell for 10-15 days on contract basis in a year with intention to deprive the petitioner from continuity in service and seniority which amounts to unfair labour practices. When the respondent was orally terminated the daily wage services of the petitioner he was assured to be engaged on contract basis, this amounted to change in service condition of the petitioner without following the statutory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The respondent department changed the service condition with comprehension that the petitioner would not complete the criteria of 240 days in the calendar year so that the petitioner is deprived from the benefits of regularization and other service benefits. It is alleged that workmen junior to the petitioner have been retained by the respondent department who were still working with the respondent department. No notice in lieu of his termination ever served to the petitioner. It is also alleged that respondent had violated the principle of 'last come first go' as the workers junior to the petitioner have been retained in service and regularized. It is also alleged that some workers who were working with the petitioner were terminated by the respondent department but they are latter re-engaged on muster roll basis by the directions of the labour Court. In the light of these averments it is prayed that since the respondent has committed gross violation of Sections 25-B, 25-F, 25-G and 25-H of the Act as well as Articles 14 and 16 of Constitution of India the orders of illegal termination/retrenchment of the petitioner w.e.f. August, 2017 may be set aside as illegal, malafide, arbitrary and unjustified. It is also prayed that petitioner be also held entitled for full back wages, seniority, continuity in service and reinstatement since August, 2017.

3. In reply filed on behalf of the respondent preliminary objections qua maintainability, cause of action, petition being bad for delay and laches and suppression of material facts etc. have been raised. On merits, it is asserted that the claimant Pradeep Kumar was not engaged in the office of Deputy Director, Horticulture, Chamba on daily wage or on muster roll. In-fact petitioner worked with manpower service company Shimla Cleanways *w.e.f.* 18.3.2017 to 20.8.2017 in PCDO's for seasonal work required for short period purely on temporary basis. Petitioner worked under the manpower service company Shimla Cleanways and since the work was finished the services of the petitioner were terminated. It is denied that workmen junior to the petitioner were retained by the department. It is denied that other workers junior to the petitioner were retained by the department or their services have been regularized at the cost of the petitioner. Other averments made in the claim petition were denied parawise. It is prayed that the petition be dismissed.

4. Petitioner by way of rejoinder denied the preliminary objections and reiterated/reasserted the facts stated in the claim petition and prayed that the relief may be granted in his favour.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether time to time termination of services of petitioner during the year 2006 to August, 2017 and final termination during August, 2017 by the respondent

without complying with the provisions of the Industrial Disputes Act, 1947, is/was illegal and unjustified, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what amount of back wages, past service benefits, seniority, regularization and compensation the petitioner is entitled to from the respondent/employer? . . *OPP*.

3. Whether the claim petition is not maintainable? . . *OPR*.

4. Whether the petitioner has no enforceable cause of action? . . *OPR*.

5. Whether the claim petition is bad for delay and laches on part of the petitioner. If so, its effect? . . *OPR*.

6. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . *OPR*.

Relief

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the facts as stated in the petition. He also produced information under RTI Act Ext. PW1/B and extract of passbook Ext. PW1/C.

7. Petitioner also examined Jagdish Chand by way of affidavit Ext. PW2/A who has deposed the fact that the petitioner was known to him and he had seen the petitioner working in Horticulture Department, Sarol from year 2006 to 2017 to the year 2017-2018. He also stated that persons junior to petitioner are still working with the department.

8. Respondent has examined Shri Kripal Singh, Dy. Director (Additional Charge), Horticulture Chamba, District Chamba, H.P. by way of affidavit Ext. RW-1. He has produced on record letter dated 21 May 2020 Ext. R-2, appointment letter dated 18.9.2020 Ext. R-3, seniority list Ext. R-4 and copy of Award dated 19.5.2011 Ext. R-5.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Assistant District Attorney for the respondent at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Issue No.6 : Yes

Relief. : Claim petition is dismissed per operative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.1&2*

11. Both these issues are taken up together for the purpose of adjudication.

12. The claim put forth of the petitioner is that he was appointed by the respondent as daily wager since 2006 and he had continuously worked for 240 days in each calendar year until August, 2017. He also alleged that his services were orally terminated which amounted to retrenchment without following the provisions of the Industrial Disputes Act, 1947. He further alleged that in violation of the provisions of the Act he was intentionally given fictional breaks in his services so that he was not able to complete 240 days of continuous service in 12 calendar months. PW 2 Jagdish Chand has also deposed on oath that petitioner was engaged as daily wager with Horticulture Department, Sarol and he had seen the petitioner working at Sarol between the year 2007 to 2017-2018.

13. The petitioner however in his cross-examination has admitted that he was engaged by the respondent through manpower agency "Shimla Cleanways" who had not been arrayed as party in this case. He also admitted that he worked with aforesaid agency *w.e.f.* 17.3.2017 to 20.8.2017. He further admitted that he was made to work in the PCDO of the department of the aforesaid company. He admitted that he was engaged for short time work. He has shown ignorance but not explicitly denied that he was paid by Shimla Cleanways Manpower and he had worked under their supervision. Quite contrary to the admission made by the petitioner in his cross-examination PW 2 Jagdish Chand has denied as incorrect that petitioner was engaged through outsource agency Shimla Cleanways.

14. The case of the respondent is quite in line with admissions made by petitioner in his cross-examination. RW1 Kripal Singh, Deputy Director, Horticulture has stated that the claimant was not engaged in the office of Deputy Director Horticulture on daily wage or on muster roll. There is no documentary proof as claimed by the petitioner. But the petitioner has worked under the manpower of service company "Shimla Cleanwasy" in between 18.3.2017 to 12.9.2017 at PCDO's and office of Deputy Director Horticulture for cleanliness work, required for short period, purely on temporary basis. He further stated that petitioner had worked in the manpower services company Shimla Cleanways for seasonal work on temporary basis and on completion of seasonal work the services of the petitioner were automatically stood terminated. He has specifically denied that petitioner was engaged by the department on muster roll basis or that he was illegally terminated. He also denied that workmen junior to petitioner have been retained by the respondent department in arbitrary and malafide manner without following the principle of 'last come first go'. He has asserted that petitioner was working under the manpower services company "Shimla Cleanways" for cleanliness work at PCDO and Deputy Director, Horticulture.

15. The document Ext. PW1/B produced on record by petitioner shows that he had worked from 18.3.2017 to 4.5.2017 for 48 days, from 3.6.2017 to 20.8.2017 for 57 days and from 1.9.2017 to 12.9.2017 for 11 days. Thus from March, 2017 to September, 2017 he worked for 116 days only. The bank statement Ext. PW1/C depicts the payment by NEFT Shimla Cleanways on 27.6.2017, 7.10.2017 and 13.10.2017 only.

16. The contention of petitioner that he had worked as beldar on daily wage basis since 2006 with the respondent is falsified from his cross-examination. The witness PW2 Jagdish Chand has contradicted the petitioner on the fact that petitioner was engaged through Shimla Cleanways. In absence of any documentary evidence to show that prior to 18.7.2017 the petitioner was working with the respondent, the statement of PW2 Jagdish Chand in this regard cannot be taken into

consideration by this court. Petitioner has failed to produce any record pertaining payment of wages, muster rolls or any documentary record of his attendance prior to 17.3.2017.

17. Learned Authorized Representative for the petitioner has argued that there is nothing to show that work done by petitioner was seasonal thus respondent has intentionally given fictional breaks in service by allowing less mandays to the petitioner. The document Ext. PW1/B shows that the petitioner was doing the work of cleanliness of toilets and office of Deputy Director Horticulture, Chamba. This was not considered as seasonal work however admittedly the petitioner was engaged by outsource agency who allotted work to him. Thus he was working under supervision of said company. Even for the sake of arguments if all the mandays *w.e.f.* 17.3.2017 to 12.9.2017 would have been allotted to the petitioner he would still not have completed 240 days of continuous service with the respondent. Moreover the petitioner was employed through outsource agency and was working under the supervision of said company, the status of petitioner as a workman *viz-a-viz* the respondent is not established in his case. No documentary evidence could be produced by the petitioner to show that any workers who have been engaged subsequent to the petitioner or along-with the petitioner were retained in service or given service benefits by way of regularization etc. by the respondent. The necessary record pertaining to the casual labourers employed by the respondent department after 1.4.1995 was produced. Perusal of the record does not depict that any workers engaged in service subsequent to the petitioner was given the benefits of any sort in discrimination of the petitioner.

18. Considering nature of work which was done by the petitioner with the respondent and time period for which he was deployed through outsource agency his disengagement cannot be considered as retrenchment within the meaning of the Act and accordingly issues no.1 and 2 are decided in favour of the respondent.

*Issues No. 3 & 4*

19. The maintainability of claim have been challenged by the respondent on the ground that the petitioner does not fall within the definition of workman nor his disengagement amounted to retrenchment. The case of the respondent that petitioner was engaged through outsource agency and worked under the supervision of outsource agency is clear from the oral and documentary evidence, hence the present claim petition is not maintainable neither the petitioner has enforceable cause of action under the Act.

*Issue No. 5*

20. It is argued by learned Authorized Representative for the petitioner that provisions of Article 37 of Limitation Act are not applicable to the proceeding under the Industrial Disputes Act, 1947. On the basis of ratio laid down by Hon'ble Supreme Court in **Ajaib Singh vs. Sirhind Coop., Marketing-cum-Processing Service Society Ltd. And Anr.,** it can be held that industrial dispute raised by the petitioner in the present case does not suffer from delay and laches. This issue is decided accordingly.

*Issue No. 6*

21. The petitioner while filing the claim before this court has not specifically mentioned that he was engaged in the year 2017 through outsource agency. He had not disclosed that he was working under the supervision of the said company and not direct supervision of the respondent. These material facts admitted by the petitioner were brought to the knowledge of this court during the course of cross-examination, thus the petitioner has not approached this court by suppressing material facts which do not entitle him for any relief. Hence this issue is answered accordingly.

*Relief*

22. In view of my discussion on the issues no. 1 to 4 and 6 above, the present claim petition is not maintainable and is accordingly dismissed. Parties are left to bear their costs.

23. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 18th day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 16/2019

Date of Institution : 25.2.2019

Date of Decision : 20.7.2024

Smt. Naseem Begum w/o Shri Sabir Hussain, r/o Village and Post Office Sarol, District Chamba, H.P. . . *Petitioner*.

*Versus*

The Deputy Director, Horticulture, Chamba, District Chamba, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, Ld. AR

For Respondent : Sh. Gaurav Keshav, Ld. ADA

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner.

"Whether the alleged termination of daily wages services of Smt. Naseem Begum w/o Late Shri Sabir Hussain, r/o Village and Post Office Sarol, Tehsil and District Chamba, H.P. from time to time during year, 2006 to August, 2017 & finally terminated by the Deputy Director, Horticulture, Chamba, District Chamba, H.P. during the August, 2017, as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits,

seniority, regularization and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that petitioner was engaged as daily wage beldar on muster roll basis by the respondent department in PCDO Sarol in June, 2006 and thereafter she worked continuously with intermittent/artificial breaks with the respondent department. During August, 2017 the respondent department orally terminated the services of the petitioner without quoting any reason. It is alleged that workers junior to her were kept/retained continuously by the respondent department and now their services have been regularized at the cost of the petitioner. She was assured that she would be re-engaged on contract basis after August, 2017. She made various requests with the officials of the respondent however despite her request her service conditions were changed. Respondent intentionally provided work to petitioner for short term/spell of 10-15 days on contract basis with the intention to deprive her of continuity in service. According to the petitioner this amounted to unfair labour practice as workers junior to the petitioner have been kept/retained continuously on muster rolls. Respondent acted in changing the service condition of the petitioner without following any statutory provision or without taking written consent of the petitioner. The respondent department changed the service condition with the comprehension that petitioner may not complete criteria of 240 days in each calendar year which would deprive her all the benefits of regularization. Before terminating the daily wage service of the petitioner she was not served any notice nor paid any compensation in lieu of notice pay. The action of the respondent is alleged to be clear cut violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). It is also submitted by the petitioner that after her illegal termination she was not provided work. She herself never faulted but the breaks given to her were fictional and intentionally given by the respondent with a view to not to allow the petitioner to complete criteria of 240 days. The cessation of work was not due to the fault of the petitioner. In these circumstances the services rendered by the petitioner are to be taken into consideration for calculating her seniority. She also asserted that some of co-workers/workmen who worked with the petitioner have been regularized by decision of Labour Court, Dharamshala. While regularizing the services of daily wage worker who were working alongwith the petitioner it was obligatory on the part of the respondent department to re-engage the petitioner on daily wage basis. This was not done and as such there was clear cut violation of Section 25-H of the Act. The petitioner has prayed that grant of the fictional breaks being malafide, arbitrary and unjustified, she be held entitled for re-engagement on daily wage basis at par with the junior workmen already working continuously with the respondent department. She has also prayed for full back wages, seniority, continuity in service *w.e.f.* 2017. She has also prayed that intermittent/fictional breaks given by the respondent should be counted as entire service from 2006 onwards for calculation of continuous service of 240 days in each year under Section 25-B of the Act and services of petitioner may be regularized in accordance with HP government regularization policies.

3. The respondent in their reply raised preliminary objections *qua* maintainability, petitioner having worked on lowest quotation basis in PCDO, cause of action, petition being bad for delay and laches and suppression of material facts. On merits, it is asserted that petitioner was not engaged in office of the Deputy Director, Horticulture, Chamba on daily wage basis or muster roll. There is no documentary proof as claimed by petitioner. It is asserted that the petitioner worked on lowest quotation basis in PCDO for seasonal work only for short period on temporary basis. Respondent has denied that any workmen junior to the petitioner were retained by the department and their services have been regularized. Respondent denied that petitioner was working on muster roll basis or that she was illegally terminated. According to respondent petitioner was engaged for seasonal work on quotation basis and on temporary basis, when the seasonal work was finished the services of the petitioner were no longer required and thus there is no violation of any of the provisions of the Act. Other averments and allegations made in the petition have been denied para-wise and it is prayed that petitioner be dismissed.

4. In rejoinder the preliminary objections have been denied. It is asserted that respondent had intentionally given intermittent/artificial breaks to the petitioner uptil 2017 when her services were finally terminated. Other averments made in the petition are reasserted and it is also asserted that the petition was not barred under the provisions of Limitation Act.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether time to time termination of services of petitioner during the year 2006 to August, 2017 and final termination during August, 2017 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947, is/was illegal and unjustified, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what amount of back wages, past service benefits, seniority, regularization and compensation the petitioner is entitled to from the respondent/employer? . . *OPP*.

3. Whether the claim petition is not maintainable? . . *OPR*.

4. Whether the petitioner has no enforceable cause of action? . . *OPR*.

5. Whether the claim petition is bad for delay and laches on part of the petitioner. If so, its effect? . . *OPR*.

6. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . *OPR*.

Relief.

6. The petitioner in order to prove her case produced her affidavit Ext. PW1/A wherein she has reasserted the facts as stated in the petition and produced on record information under RTI Act Ext. PW1/B, extract of passbook Ext. PW1/C and copy of Award dated 19.5.2011 Ext. PW1/D.

7. Petitioner also examined Kehar Singh who produced his affidavit Ext. PW1/A. He worked as HEO at PCDO Sarol between the year 2006 to 2009. He has asserted that petitioner worked as daily wage beldar and he used to mark her attendance. He also asserted that muster rolls were being prepared and attendance of the daily wagers were also marked in separate register while attendance contract register was prepared by the department. He also stated that Devi Prasad, Jagat Ram, Suresh Kumar, Gohkhu Ram, Smt. Kamla, Smt. Koshla Devi etc. were also working along-with the petitioner.

8. Respondent has examined Shri Kripal Singh, Dy. Director (Additional Charge), Horticulture Chamba, District Chamba, H.P. by way of affidavit RW-1. He produced on record copies of bills alongwith quotations, sanction and comparative statements Ext. R-1, bills alongwith quotations, sanction and comparative statements Ext. R-2, application and bill Ext. R-3, bills alongwith quotations, sanction and application Ext. R-4, bills alongwith quotations, sanction and comparative statement Ext. R-5, bills along with quotations, sanction and comparative statement Ext. R-6, bills alongwith quotations, sanction, application and comparative statements. R-7, bills alongwith sanction, application R-8, quotations and comparative statements Ext. R-9, application, quotations, comparative statement and bill Ext. R-10, applications, bill, quotation, comparative statement Ext. R-11, application, bill, quotations and comparative statement Ext. R-12, seniority list Ext. R-13, copy of Award dated 19.5.2011 Ext. R-14, payment detail R-15, letter dated 21st May, 2020 Ext. R-16 and appointment letter Ext. R-17.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Assistant District Attorney for the respondent at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Decided accordingly

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief. : Claim petition is partly allowed per operative portion of the Award.

**REASONS FOR FINDINGS**

*issue No. 1*

11. The petitioner has claimed that she was engaged as daily waged beldar on muster roll basis in June, 2006 by the respondent department. Even though she worked continuously she was given artificial/intermittent breaks. RW1 Kripal Singh, Deputy Director, Horticulture has denied that petitioner was engaged at PCDO, Sarol, Chamba on daily wage or muster roll basis. He asserted that petitioner had worked on lowest quotation basis in PCDO for seasonal work, cleanliness work was required for short period on temporary basis only. It is pertinent to mention that Kripal Singh RW1 has not clearly deposed or mentioned in his statement in respect of the period of services rendered by the petitioner from the year 2006 to 2009 which is evident from documents produced by the respondent.

12. PW2 Kehar Singh, who was worked as HEO, Incharge at PCDO Sarol, Chamba has deposed that petitioner was working as daily wage beldar at PCDO Sarol in the year 2006. He also states that at that time muster rolls were issued in respect of workers who worked for 18-20-22 days in a month. He also stated that the attendance of the workers were marked and thereafter the entry was made in the contract register and he used to mark attendance of labourers. He asserts that petitioner had worked with him from year 2006 to 2009. He denied that petitioner had worked on lowest quotation basis, a fact which is also not admitted by the petitioner in her cross-examination.

13. Respondent has not suggested that during the employment of petitioner she had not worked for 240 days in a calendar year. The document Ext. PW1/B clearly shows that petitioner was working with the respondent department between 2006 to 2008. RW1 Kripal Singh has deposed that petitioner was engaged on lowest quotation basis for 14 months. He admits that sanctioned order mentioned word “wages” in some parts of comparative statement daily wage had been written. Contrary to the stand taken by the respondent whereby they only counted the services of the petitioner for the year 2017 and 2018 through an outsource agency company, bills have been produced on record which explicitly shows that petitioner was in continuous service with the respondents from 2006 to 2008. PW2 Kehar Singh who was HEO, PCDO Sarol from 2006 to 2009

has deposed on oath that muster roll and attendance of the workers including the petitioner was prepared. It is not disputed in his cross-examination that he was not an employee of the respondent at PCDO during relevant interval. It is also not controverted in his cross-examination that attendance of the workers was not marked by him. Consequently non production of attendance record in the court by the respondent would lead to adverse inference against the respondents. The nature of work described in the bills gardening, cutting grass and drain cleaning etc. Though it is asserted by the respondent that the work done by the petitioner was seasonal and purely on temporary basis however no notification had been produced by the respondents to show that the nature of services rendered by the petitioner has been declared as seasonal activity. The work *ex-facie* appears perennial in nature. The concealment of mandays dedicated by the petitioner in the work from 2006 to 2009 would operate in detriment to the case of the respondent. PW2 Kehar Singh deposed that at that time work of PCDO was not on quotation basis but it was done in routine manner. Sanction order produced by the respondent also mentioned wages in respect of labour contract. Hon'ble High Court of H.P. in **Ram Singh vs. State of Himachal Pradesh and others in CWP NO.789 of 2024, decided on 4.7.2024** has observed in para nos. 5 and 6 as follows:—

> "5. It is not in dispute that the petitioner is serving with the respondents-Department since 2015 continuously by putting in more than 240 days in each calendar. It appears that in order to deny such kind of workmen, the benefits of regularization, respondent-State has come with the nomenclature of "bill basis" but, fact of the matter still remains that be it a daily wager or a bill basis worker, he is serving the Department regularly putting in more than 240 days in each calendar.
>
> 6. This Court of the considered view that the distinction, which is now being created by the respondents- Department between a daily wage worker and a bill base worker is violative of Article 14 of the Constitution of India. Be it a daily wage worker or a bill base worker, he is rendering the same service to the Department. Therefore, in the absence of their being any intelligible differentia between a daily wage worker and bill base worker, the classification that has been made by the Department cannot pass the touch stone of Article 14 of the Constitution of India.

14. The initial service of the petitioner from 2006 to 2008 which depicted to have been rendered on lowest quotation or bill basis appear to be an intentional effort on the part of the respondent to deprive the petitioner of the benefits of continuity of service. There is nothing to show that the petitioner was not working under the direct supervision of the respondents during said period. It appears that emoluments which were required to be paid to the petitioner were shown as payment on bill basis deliberately in order to avoid completion of 240 days of service and deprive her of the benefits of service. The conversion of services of petitioner from daily wage basis to the outsource employee also changed her service condition in violation of Section 9A of the Act. The record shows that the services of the petitioner on quotation basis by suppressing the mandays which were being recorded by way of attendance are not produced before the court. This amount to unfair labour practice as provided under Rule 10 of the Vth Schedule of the Act which reads as follow:—

> "10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

15. The evidence clearly reveals that even though the services rendered by the petitioner have been depicted on bills she is presumed to have completed 240 days of service between the year 2006 to 2008 and subsequently respondents changed her service condition without following the statutory provisions. In these circumstances the fictional breaks which have been attributed to

the services rendered by the petitioner from year 2006 onwards alongwith her final termination in August, 2017 are illegal and unjustified. Issue no.1 is accordingly decided in favour of the petitioner.

*Issue No. 2*

16. The petitioner has prayed for grant of back wages, past service benefits, seniority, regularization and compensation etc. The evidence on record shows that the petitioner was rendering her services to the respondent from 2006 to 2008 as shown in the record of bills quotation produced before this court. The statement of PW2 Kehar Singh also shows that she was employed since the year 2006. All these facts have been suppressed by the respondent. On the other hand, it is also clear that petitioner has given services from August, 2017 where after she was finally terminated in violation of the provisions of Section 25-G of the Act. There is no evidence in the case file to prove that the petitioner was not gainfully employed for the period for which her service record could not be produced before this court. There is no evidence to show that she was not gainfully employed from the period of her final termination till date. In these circumstances the petitioner is held entitled for reinstatement, past service benefits, seniority and compensation to the sum of Rs.50,000/- along with interest from the respondent. The documents regarding regularization and seniority of the employee produced on the case file do not depict that any of the employee junior to petitioner was retained and subsequently regularized, hence no relief in this regard can be provided to the petitioner. Issue no.2 is decided accordingly.

*Issues No. 3 & 4*

17. The onus of proving these issues on the respondent. However, the essential documentary evidence regarding rendering of service by the petitioner clearly shows that she had put in more than 240 days of service in a calendar year and her termination as well as illegal fictional breaks in her service were not sustainable. Thus the present petition is maintainable and the petitioner had enforceable cause of action to file the present petition.

*Issue No. 5*

18. The petitioner has raised the industrial dispute only after the year 2017. The document on the case file clearly shows that she was employed with the respondent way back in the year 2006 and there is record of continuity service till 2008. There is also record of her services in the year 2017. In the peculiar circumstances of the case it could not be held that there was no existence of industrial dispute due to delay and laches on the part of the petitioner. This issue is accordingly decided in favour of the petitioner.

*Issue No.6*

19. No evidence has been produced by the respondent which would point towards the fact that the petitioner has suppressed the material facts from this court, hence this issue is decided in favour of the petitioner.

*Relief*

20. In view of my discussion on the issues no. 1 to 6 the claim petition succeeds and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. She is also held entitled for seniority and continuity in service from the date of her illegal termination alongwith compensation to the tune of Rs. 50,000/- alongwith interest @ 6% from date of illegal termination in year 2017 till realization. Parties are left to bear their costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 20th day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 139/2017

Date of Institution : 21.6.2017

Date of Decision : 06.7.2024

Shri Kuldeep Singh s/o Shri Milkhi Ram, r/o Village Dadoa, Bari, Tehsil Jaswan, District Kangra, H.P. . . *Petitioner*.

*Versus*

The Divisional Forest Officer, Dehra Forest Division, Dehra, District Kangra, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Anubhav Walia, Ld. Adv.

: Sh. Mohit Dhiman, Ld. Adv.

For Respondent : Sh. Ravi Kumar, Ld. ADA

**AWARD**

The reference received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner, H.P., the terms of reference are as under:—

"Whether the termination of services of Shri Kuldeep Singh s/o Shri Milkhi Ram, r/o Village Dadoa, Bari, Tehsil Jaswan, District Kangra, H.P. from time to time during years, 1996 to 2013 and finally terminated during year, 2013 by the Divisional Forest Officer, Dehra Forest Division, Dehra, District Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent no. 2 as daily wage worker in Forest Division Range Dehra from 5.2.1993. He has alleged that he worked for 240 days in each calendar year after being engaged as beldar. Thereafter he was transferred and shifted from Dadora Beat to Terrace Beat and continuously worked there for 240 days in each calendar year. The employer however, had given him fictional breaks. It is alleged that respondent no. 2 violated provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) and no compensation was gave to the petitioner before his illegal and wrong retrenchment. It is alleged that respondent no. 2 intentionally and illegally given breaks to the petitioner while juniors to the petitioner provided services for whole year and respondent no.2 had sufficient work and requisite funds available with them. No notice prior to illegal and wrong retrenchment was ever given to the petitioner. Juniors namely Krishan Chand, Jagir, Rattan Chand and Arvind Sharma who were also engaged on seasonal basis have been regularized without adhering the Government policy. The respondents are alleged to not to have followed the policy of 'first come last go'. It is further asserted that since the petitioner had rendered his services from 5th February, 1993 to 21.3.2013 *i.e.* for more than 10 years his services are liable to be regularized. After alleged arbitrary termination the petitioner kept on visiting the office of respondent as well subordinate office of the respondent and he was not gainfully employed till date in any institution nor is having his own business or work and no work is available in his near vicinity. He belongs to IRDP/BPL family and after his illegal termination he and his family faced starvation. The petitioner had prayed in the demand notice that respondent be directed to set aside the termination dated 21.3.2013 and give employment to the petitioner with consequential benefits *i.e.* back wages, past service benefits, seniority, regularization, arrears or difference of the wages etc.

3. Respondents no. 1 and 2 by way of reply raised preliminary objections *qua* maintainability and claim petition being bad for delay and laches. On merits, it was denied that the petitioner was engaged as daily wager *w.e.f.* 5th February, 1993 or that he had completed 240 days of work in each calendar year. It is further asserted that petitioner was engaged as daily wager *w.e.f.* 16.9.1996 and he worked intermittently upto 3/2013. It has also been asserted that the petitioner had left the work at his own sweet will. The petitioner was engaged on temporary basis for seasonal work subject to availability of work and funds. The respondents have denied that petitioner had completed 240 days of work to fulfil the condition of Section 25-B of the Act. They have also denied that they have violated any provisions of Sections 25-F, 25-G and 25-H of the Act. It is also asserted that Krishan Chand, Jagir Singh and Rattan Chand were senior to petitioner and Arvind Sharma cannot be considered his junior as he has engaged as daily wager in different category *i.e.* peon daily wager. It is also asserted that Range Forest Officer Dadasiba Range had inadvertently mentioned the date of engagement of petitioner *w.e.f.* 5.2.1993. Even though the petitioner actually engaged on 16.9.1996 in this regard the fact has been verified by the Range Forest Officer Dadasiba in a the certificate issued vide letter No.166/DS dated 6/6/2018. Other averments made in the petition were denied. It was denied that any fictional breaks were given to the petitioner. It is prayed that the petition be dismissed.

4. Petitioner by way of rejoinder had denied the preliminary objections. He also denied that he was engaged on temporary basis for seasonal work only and reasserted the facts as stated in the claim petition.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether time to time termination of services of the petitioner by the respondent during years, 1996 to 2013 and final termination of services of petitioner during year, 2013 is/was illegal and unjustified, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what services benefits, the petitioner is entitled to? . . *OPP*.

4. Whether the claim petition is not maintainable in the present form, as alleged? . . *OPR*.

5. Whether the claim petition is bad on account of delay and laches, as alleged? . . *OPR*.

Relief.

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He also produced copy of letter dated 1.7.2013 reply to legal notice Mark-A and copy of IRDB/BPL Certificate Ext. PW1/B. Petitioner also examined Nanak Chand as PW2 and filed his affidavit Ext. PW2/A this witness also stated that petitioner had joined the duty in the forest department in the year 1993 on daily wages and he was regularly attending the office but the petitioner had been retrenched by the department illegally in the year 2013 when he requested for his regularization. The service of other labourers whose services were engaged by the department as daily wagers after the joining of the petitioner have been made regular and permanent. PW3 Kapoor Singh has stated in his affidavit Ext. PW3/A that the petitioner had joined his service in forest department and was regularly attended the job. He was doing all kinds of nursery and forest plantation works. The latter came to know that the services of the petitioner have been retrenched in the year 2013. He further stated that the services of five persons who had joined the department after joining of the petitioner have been regularized but the services of the petitioner were retrenched when he requested to regularize his services.

7. Respondent has examined Shri Nagender Guleria, Divisional Forest Officer, Dehra by way of affidavit Ext. RW1/A, he reiterated the facts stated in the reply and also produced on record the copy of mandays chart Ext. RW1/B, copy of letter dated 6.6.2018 Ext. RW/1C, copy of detail of workers Ext. RW1/D and copy of seniority list (2 pages) Ext. RW1/E in evidence.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Yes

Issue No.2 : decided accordingly

Issue No.3 : No

Issue No.4 : No

Relief. : Claim petition is partly allowed per operative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.1*

10. The reference dated March, 2017 presented before this court was specific *qua* date of termination of services of petitioner/workman during year 1996 to 2013 and finally in the year

2013. The claim petition asserts that the petitioner was engaged in the department *w.e.f.* 5th February, 1993 to 21.3.2015. This claim made to gain strength from the letter Mark-A where Range Forest Officer in reply to the notice addressed to Divisional Forest Officer Dehra had mentioned that the petitioner was found to carry out forest seasonal work *w.e.f.* 5.9.1993 to 21.3.2013. Forest Range Officer further clarified *vide* letter Ext. RW1/C that as per bill vouchers and cash book the time period was 1996 to 2013. In order to determine this fact this court cannot beyond the reference thus issue would accordingly framed and adjudicated.

11. The petitioner has deposed on oath that he was engaged as daily wage worker at Dadoa Beat from 5.2.1993. He initially remained daily wage beldar. He had completed 240 days of service in each calendar year. The respondent has intentionally and illegally given breaks to him but his juniors have been provided the services of whole year. This contention is proved and supported by PW2 Nanak Chand. He also states that the petitioner had joined in the year 1993 on daily wages. The petitioner according to him was doing the work of nursery and plantation and completed 240 days of work in each calendar year. He denied that the petitioner had worked on seasonal basis. PW3 Kapoor Singh also states that the petitioner had joined in the service of department and doing work for 240 days in a calendar year. PW2 Nanak Chand and PW3 Kapoor Singh have remained the workmen with the respondent department and this fact is not disputed.

12. Respondents have however disputed that the petitioner was engaged as daily waged worker *w.e.f.* 5.2.1993. RW1 Shri Nagender Guleria has specifically made statement to this effect in his affidavit and asserted that petitioner worked from 16.9.1996 intermittently upto 3.2.2013. He alleges that petitioner had left the work on his own sweet will and also alleged that the petitioner was engaged on temporary basis for seasonal work and subject to availability of work and funds and he (petitioner) never completed 240 days in each calendar year. Mandays chart Ext. RW1/B of the petitioner from the year 1996 to 2013 has been produced on record. RW2 Shri Sunny Verma, Divisional Forest Officer has produced attendance sheet maintained for the years 1994-1995 claiming that the name of petitioner is not mentioned therein. Hon'ble High Court of H.P. in **State of H.P. & Anr. Vs. Ramesh Kumar in CWP No.7613 of 2014** has also in paras No. 8,9,10 and 11 held as under:—

> "8. The workman tendered in affidavit, Ex. PW-1/A, wherein he reiterated the contents of the reference petition. In his cross-examination he has admitted that his services were engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar and later on, in November, 2004, being surplus, he was transferred to HPPWD (D&R) Division, Baijnath. The workman denied that he used to work as per his convenience and no fictional breaks were given to him
>
> 9. Both workman and the employer acknowledge that the workman was engaged as a daily waged beldar on 01.05.1999 and he continued as such upto September, 2007. As per the workman, he was terminated in September, 2007, whereas as per the employer, the workman was an intermittent worker and he used to work as per his convenience. Shri J.S. Guleria, Executive Engineer,HPPWD (B&R) Division Baijnath (respondent) testified as RW-1. He corroborated the contents of the reply. In his cross-examination he has deposed that no notice *qua* willful absence from duty was ever served upon the workman. In the given facts and circumstances, when no notice was ever served upon the workman by the employer calling him to resume his duties, abandonment of service cannot be attributed to the workman. Moreover, nothing is emanating from the record that proceedings were ever initiated against the workman for willful absence or otherwise. Thus, the plea that the workman was an intermittent worker, who used to work as per his convenience goes unestablished.

10. Mandays chart (Annexure P-II), portrays that the workman did not complete 240 days in a calendar year preceding the date of his termination, *i.e.* September, 2007, as mandated by Section 25-B of the Act. Therefore, the provisions of Section 25-B are not attracted. Mandays chart of Shri Harbans Lal and others reveal that persons junior to the workman were provided work for 240 days or more by the respondent/employer in a block of 12 calendar months. The said conduct of the employer discriminatory and does not stand in the eyes of law. Thus, after perusal of the mandays charts of the workman and other workers, it clearly and unambiguously stands established that there had been violation of the provisions of Sections 25-G and 25-H of the Act, rendering the termination of the workman illegal. It is not at all obligatory for a workman to complete 240 days in a calendar year preceding his termination to take benefits of the provisions of Sections 25-G and 25-H of the Act. In the present case, the breaks given to the respondent/workman were fictional breaks, which were given deliberately in order to make the petitioner not to complete 240 days in a calendar year. These breaks cannot be considered as actual breaks. The petitioners have failed to demonstrate that when the respondent did not turn up for work, whether any notice was served to him, and they have also failed to prove that no work was available during those periods when the workman was not allowed to work. In view of the above facts, an adverse inference is required to be drawn against the petitioners and this Court finds that the breaks given to the petitioners were fictional breaks, which were not within the control of the respondent/workman. Therefore, this Court finds no infirmity with the well reasoned judgment of the learned Trial Court.

11. In Uptron India Ltd. *Vs.* Shammi Bhan and another, (1998) 6 Supreme Court Cases 538, the Hon'ble Apex Court has held that the employer cannot terminate the services of the workman until and unless principles of natural justice have been followed and the workman has been provided reasonable opportunity to explain himself before terminating his services on the basis of abandonment of job."

13. The mandays chart Ext. RW1/B shows that since the year 1996 upto 2013 the petitioner had not completed 240 days in one calendar year. Ext. RW1/C shows that the respondents were maintaining bill vouchers and cash books but since the muster rolls on record had been weeded out the only document for determination of the length of services provided to petitioner is the mandays chart Ext. RW1/B. The number of working mandays as mentioned in the chart are contrary to the position of the petitioner as well as oral statement of witnesses produced on his behalf.

14. The respondents have alleged that petitioner had worked intermittently and was in habit of leaving the work out of his own will. No such record has been produced to show that respondent had issued any notice to the petitioner for leaving the work and out of his own will. RW1 Shri Nagender Guleria admitted that seasonal workers are not transferred. RW2 Shri Sunny Verma, Divisional Forest Officer has admitted that there is no office order with the respondents to show that the petitioner was called only for the seasonal works. RW2 Shri Sunny Verma has feigned ignorance to the suggestion that petitioner had worked in a nursery to maintain plants with the department. This fact has been asserted by the petitioner witnesses. Respondents did not produce any evidence nor specified the nature of seasonal work done on demand by the petitioner. There is no evidence to show that there was no work available with the respondents and there was deficiency of funds due to which mandays could not be granted to the petitioner. As already mentioned above, there is nothing to show that the petitioner has left the work out of his own will at different intervals. Document Ext. RW1/D shows that enough work was allotted to Rattan Chand, Krishan Chand, Jagir Singh and Arvind Kumar in the year 1998. Even in the year 1996 Arvind Kumar was given enough mandays while petitioner was given less mandays on the pretext of

seasonal work. Thus it is very much clear that the respondents have acted with partiality and fictional breaks were intentionally given to the petitioner which was not in the control of the petitioner/workman as reflected in the mandays chart produced on behalf of the respondents. Thus conduct of the respondents appears to be discriminatory when compared that the mandays chart of the contemporary workers including the workers who have been deployed after the services of the petitioner were already being taken by the department. Merely because the petitioner witnesses have stated that they completed 240 days of work in a calendar year would not count to disregard the facts which emerges from the respondents evidence. The evidence on the case file clearly shows that the petitioner has asserted to have worked almost throughout the year but the respondent had not allotted the requisite number of mandays even when there was availability of work with the respondents. Thus time to time termination of services of petitioner by the respondents from the year 1996 to 2013 and his final termination of 2013 is unjustified and illegal. Issue No.1 is accordingly decided in favour of the petitioner.

*Issue No. 2*

15. The detail of workers as mentioned in Ext. RW1/D clearly shows that Sh. Arvind Kumar s/o Sh. Jagdish Chand, r/o Kutehra at serial no.4 was deployed in the year 1998 and thereafter was provided enough mandays which were necessary and requisite for continuity of service and subsequent regularization as per the Government policy. The document did not show that the same preference was given to the petitioner and requisite number of mandays were not allotted to him. It is already mentioned above that the contention of the respondents that petitioner had been leaving the work out of his own free will and worked intermittently could not be established as there is no notice issued by the respondents to the petitioner in this regard. In accordance with the reference the petitioner can be held to be engaged in the service as daily wager from the year 1996 till the year 2013. It has been held by the Hon'ble Supreme Court of India in **State of Haryana vs. Dilbagh Singh** in **Civil Appeal No. 3443 of 2006** which reads as under:—

> "We have heard learned counsel for the parties. Learned counsel for the appellant has failed to substantiate that no person junior to the respondent had been retained in the Department. It is a clear finding of the Tribunal that a person like Krishan s/o Dharam Singh who is junior to the respondent is still working with the Management whereas the services of the respondent had been terminated. It is also alleged that another person named Mahabir who is also junior to the respondent is still working with the Management. Therefore, the Tribunal has found violation of Sections 25-G & 25-H of the Act. This finding of fact has not been controverted by the management and there is no reason to take a different view from the view taken by the Tribunal which was affirmed by the High Court. Hence, we find no merit in this appeal and the same is accordingly dismissed. The respondent shall be reinstated but looking into the peculiar facts and circumstances of this case, he will not be entitled to any back wages. The appellant shall issue order of appointment of the respondent within one month from the date of receipt of this order. There will be no order as to costs".

16. Since the termination of service of the petitioner was not in accordance with the Act the petitioner is entitled for re-employment alongwith all the consequential benefits and seniority, regularization as per the Government policy without back wages. Issue no.2 is decided accordingly.

*Issues No.4 & 5*

17. The onus proving of these issues on the respondents. The maintainability of petition was challenged on the ground that petitioner did not fulfill the requisite of continuous service under the Act and that the claim petition was bad on account of delay and laches.

18. No specific time period has been provided under the Act in order to raise demand notice before the appropriate Government. Though there does not appear to be an inordinate delay in filing the present petition and the petitioner has proved that he was employed and working with the respondents while respondents failed to establish that the petitioner had intermittently left the work out of his own free will. In these circumstances claim petition is maintainable and not bad on account of delay and laches. Both these issues are decided accordingly.

*Relief*

19. In view of my discussion on the above issues, the claim petition succeeds and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. He is also held entitled for seniority and continuity in service from the date of his illegal termination as well as regularization as per the Government policy but without back wages. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 6th day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-**CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 181/2017

Date of Institution : 16.8.2017

Date of Decision : 30.7.2024

Shri Gere Ram s/o Shri Datu Ram, r/o Village Khardi, P.O. Podakothi, Tehsil Sunder Nagar, District Mandi, H.P. . . *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. L.B. Sharma, Ld. Adv.

For Respondent : Sh. Ravi Kumar, Ld. ADA

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner.

> "Whether the termination of services of Shri Gere Ram s/o Shri Datu Ram, r/o Village Khardi, P.O. Podakothi, Tehsil Sunder Nagar, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. *w.e.f.* 31.10.2015 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the petitioner is a permanent of Village Khardi, P.O. Paure Kothi, Tehsil Sundernagar, District Mandi, H.P. was engaged as daily wage Beldar by the respondents in the year 2008 and completed 240 days of work in a calendar year. It is asserted that petitioner was discharging his duty efficiently without any complaint upto year 2012 and thereafter the respondents started giving artificial breaks to the petitioner and his services were not regularized. It is submitted that there was sufficient work available with respondent department which was permanent in nature but the services of the petitioner were terminated in the year 2015 *i.e.* 31.10.2015 and he was orally asked by respondent no.2 not to come on duty. It is alleged that juniors to the petitioner Hari Chand, Surender Kumar, Hem Chand, Jhabe Ram, Meena, Chaman Lal and others are still continuing to work with respondent. Petitioner had requested the respondent to re-engage him but his requests were not adhered to. According to petitioner he is poor and uneducated person who is not aware of the legal position and he was intermittently engaged by respondent on payment of bill basis. Earlier he was given payment on muster-roll basis. The petitioner is still being engaged on duty by the respondent on bill basis. According to the petitioner his oral termination by the respondent was illegal and not binding to the rights of the petitioner. He had requested the respondent to issue muster rolls but they did not comply with his request. He has further submitted that respondents be directed to produce the relevant record pertaining to seniority of daily wager circulated till date. The petitioner approached the Labour Officer, Sunder Nagar who referred the matter to Labour Commissioner for conciliation and the reference was made to this court. Petitioner has prayed that he did not have any source of income and right to livelihood has been snatched illegally. Petitioner has prayed for relief to the effect that the oral termination of petitioner dated 31.10.2015 may be declared as null and void. Respondents be direct to prepare seniority list from 2008 onwards. The petitioner may be also given seniority from 2008 onwards and respondent be directed to pay back wages to the petitioner for the period of artificial breaks.

3. The respondents by way of reply raised preliminary objections *qua* maintainability. The respondents asserted that petitioner was engaged in April, 2008 to carry on protection work of forest work in fire season only. He worked intermittently from 2008 to 2012 to carryout forest work during fire season. Thereafter from August, 2013 till March 2018 he has worked on bill basis. According to the respondents the petitioner had not completed 240 days of work upto 2012 as he was an intermittent worker. He would come and leave the work at his own sweet will. Thus the question of providing artificial breaks does not arise. The petitioner was given work as and when he has approached the respondent department as per availability of work and funds. Only those daily wage workers were regularized by respondent department who fulfilled the condition of regularization as per government policy. It is asserted that the services of petitioner had never been terminated which is clear from the mandays chart produced before the court. It is also asserted that no artificial breaks were ever given to the petitioner since he worked merely an intermittent worker. Other averments made in the petition were denied and it was prayed that the petition may be dismissed.

4. In rejoinder the preliminary objections have been denied and facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 31-10-2015 is/was illegal and unjustified, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the claim petition is not maintainable, as alleged? . . *OPR*.

Relief.

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he reiterated the facts stated in the petition. He also produced copies of bills Mark-1 to Mark-27, copy of reply to the demand notice Mark-28, copies of bank account statements Ext. PW1/B and Ext. PW1/C and copy of mandays chart Mark-29 in evidence.

7. Petitioner also examined Sher Singh as PW2 who also stated in his affidavit Ext. PW2/A that Gere Ram was working with respondent department since 2008 thereafter his services were terminated in the year 2015. Gere Ram was re-engaged but not on muster rolls and merely on bill basis. Other similar situated persons have been regularized and there is sufficient work with the respondent.

8. Respondent has examined Shri Subhash Chand Prashar, HPFS, working as Divisional Forest Officer, Suket Forest Division, Sunder Nagar by way of affidavit RW-1. He reiterated the pleadings made on behalf of the respondent and produced on record mandays chart of the petitioner Ext. R-1 in evidence.

9. I have heard the learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondent at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Yes

Issue No.2 : Decided accordingly

Issue No.3 : No

Relief. : Claim petition is partly allowed per operative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.1*

11. Petitioner has stated on oath that he was working as daily wage beldar since 2008 upto 2015. He had completed 240 days of work in a year but he was given intermittent/artificial breaks

despite availability of sufficient work. On 31.10.2015 he was intimated not to come on duty. PW2 Sher Singh who also works with the respondent department has deposed the similar facts. He also states that after the reference was made Gere Ram was employed on bill basis and not on muster roll basis. RW1 Subhash Chand Prashar, Divisional Forest Officer, Suket has however asserted that the petitioner has worked intermittently *w.e.f.* April, 2008 to June, 2012 only during fire season and since October, 2013 he is working upto 2018 on bill basis.

12. Undoubtedly the onus to prove the 240 days of work in a calendar year was on the petitioner and this fact is stated on oath by the petitioner however according to him he was given intermittent breaks by the respondent. The mandays chart of petitioner is Ext. R-1. Copy of the same as also been produced on record by the petitioner. Mandays chart shows that since 2008 to 2012 the petitioner has worked for short intervals and since 2013 he worked on bill basis but there was no records of mandays dedicated by the petitioner for the work *qua* which payment is shown to have been made on bill basis. Petitioner has produced the bills Ext. PX1 to PX9. The bills Ext. PX1, PX2 to PX9 as well as Mark-5, 6, 7, 8, 9,10,11,12 and 13 revealed that respondents were preparing bills of work done by the petitioner since 2008 upto 2012 also. The fact which is visible from the mandays chart Ext. R-1 is that prior to 2012 even though work bills were being prepared the record of mandays was kept but subsequently the mandays were excluded from the record. This amounted to change in working condition/service condition of the petitioner without his consent and without compliance of provisions of Section 9A of the Industrial Disputes Act, 1947.

13. The contention of the respondent is that petitioner was a casual worker who came to work and left the work at his own sweet will. Respondent could not produce any documentary or oral evidence to show that petitioner had refused to work despite availability of work and any notice was issued to him to join his work. Another contention raised by the respondent is that the work done by the petitioner was merely forest protection work which is seasonal in nature. Contrary to this the bills which have been produced on record show that much wider range of services being provided by the petitioner and his work was not confined to the work of forest protection only. PW2 Sher Singh has admitted in his cross-examination that Gere Ram had worked from 2013 to 2018 on bill basis and is still working with the respondent. Ext. R-1 shows that the respondent has concealed the fact that prior to 2012 while the bills were being prepared they kept a record of mandays chart dedicated by the petitioner but for no expressed reason the mandays from the year 2013 were being concealed even though similar kind of bills were being prepared qua service rendered by the petitioner. Thereafter Gere Ram is shown to have been worked on bill basis only. The services of petitioner cannot be considered to be terminated in strict sense but there was deliberate measure on the part of the respondent to change the condition of service of the petitioner so as to deprive him from the benefit of continuous service which would only be given in the favour of the petitioner once the mandays completed by him were duly established. The petitioner was not aware of the fact that respondent had discontinued to keep a record of his mandays since 2013. The concealment of mandays of the petitioner or non preparation of muster roll of the petitioner with respect to the work done by him was since 2012 and it would give rise to an adverse inference against the respondent. Hon'ble High Court of H.P. in **Ram Singh vs. State of Himachal Pradesh and others in CWP NO.789 of 2024, decided on 4.7.2024** has observed in para nos. 5 and 6 as follows:—

> "5. It is not in dispute that the petitioner is serving with the respondents Department since 2015 continuously by putting in more than 240 days in each calendar. It appears that in order to deny such kind of workmen, the benefits of regularization, respondent-State has come with the nomenclature of "bill basis" but, fact of the matter still remains that be it a daily wager or a bill basis worker, he is serving the Department regularly putting in more than 240 days in each calendar.

6. This Court of the considered view that the distinction, which is now being created by the respondents-Department between a daily wage worker and a bill base worker is violative of Article 14 of the Constitution of India. Be it a daily wage worker or a bill base worker, he is rendering the same service to the Department. Therefore, in the absence of their being any intelligible differentia between a daily wage worker and bill base worker, the classification that has been made by the Department cannot pass the touch stone of Article 14 of the Constitution of India.

14. Thus after year 2012 till 31.10.2015 *i.e.* the date of alleged termination of the petitioner the petitioner can be held to have completed 240 days of work in a period of 12 calendar months prior to his termination. The services of petitioner in such a case could not be dispensed with without complying with the provisions of the Industrial Disputes Act. This court cannot travel beyond the lines of reference and though petitioner is still working with the respondent on bill basis breaks in his services beyond 31.10.2015 was illegal and arbitrary. Specific allegations have been made by the petitioner that the workers junior to him have been retained and regularized by the department. The name of the workmen has also been referred in the pleadings. Respondent on the other hand did not produce the seniority list corresponding to the year of an employment of the petitioner. In this regard also an adverse inference would arise against the respondent. On the lines of reference it can be held that termination of the services of the petitioner on 31.10.2015 without complying with the provisions of the Industrial Disputes Act was illegal and unjustified. Issue no.1 is accordingly decided in the favour of petitioner.

*Issue No. 2*

15. The evidence produced on record shows that the disengagement of petitioner on bill basis was in violation of the provisions of the Industrial Disputes Act. Thereafter, discontinuance of the service of the petitioner after 31.10.2015, was also illegal and unjustified. In these circumstances petitioner is held entitled for the reinstatement, service benefits including the seniority since 31.10.2015 and compensation to the same of Rs. 25,000/- alongwith interest. Hence this issue is also decided in the favour of petitioner.

*Issue No. 3*

16. The onus of proving this issue on the respondent. The respondent has produced mandays chart and relied upon the same to prove that the petitioner has not completed mandatory period required for compliance of the provisions of Industrial Disputes Act. It is however revealed from the record that the conduct of the respondents was not bonafide and they had deliberately changed the working condition of the petitioner by avoiding to record his mandays and did not comply with the provisions of the Industrial Disputes Act. In these circumstances the present claim is maintainable and the issued no.3 is decided in the favour of the petitioner.

*Relief*

17. In view of my discussion on the issues no. 1 to 3 the claim petition succeeds and is partly allowed. The respondents are directed to reinstate the services of the petitioner forthwith. He is also held entitled for seniority and continuity in service from the date of his illegal termination alongwith compensation to the tune of Rs. 25,000/- alongwith interest @ 6% from date of illegal termination in year 2015 till realization. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 24/2022

Date of Institution : 31.3.2022

Date of Decision : 30.7.2024

Shri Bhagwan Dass s/o Shri Param Dev, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner*.

*Versus*

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Joint Labour Commissioner.

> "Whether the termination of services of Shri Bhagwan Dass s/o Shri Param Dev, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 08.07.2005 by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. who had worked on daily wages basis as beldar and has raised his industrial dispute *vide* demand notice 24.09.2009, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 4 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that petitioner was appointed on daily wage basis as beldar *w.e.f.* December, 1998 and continued to work with the respondent till

8.7.2005. It is alleged that the services of the petitioner were retrenched *vide* notice dated 2.7.2005 *w.e.f.* 8.7.2005 alongwith other 1086 surplus workers in the category of beldar. The retrenchment compensation was paid under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) and petitioner also received retrenchment compensation amounting to Rs.10290/-. It is asserted that petitioner had completed 240 days in each calendar year from December, 1998 to 7.7.2005 as well as 240 days in 12 calendar months preceding the date of his retrenchment alleged to be illegal. It is submitted that while carrying out retrenchment department did not follow the principle of 'last come first go' retained some workers junior to the petitioner named Shashi Pal s/o Bihari Lal (6.4.1999), Roshani Devi w/o Nag Ram (4.7.1999), Mamta Devi w/o Hans Raj (6.4.2000), Ajay Kumar s/o Hari Chand (1.12.2003) which was clear violation of Section 25-G of the Act. It is further alleged that after retrenchment of petitioner many fresh hands were appointed by department namely Pradeep Kumar s/o Bahadur Singh (23.11.2007), Lekh Raj s/o Ram Saran (11/2004) and Satya Devi w/o Suresh Kumar (27.1.2011) but the petitioner was not given an opportunity for re-employment which was in clear violation of Section 25-H of the Act. It is further submitted that out of the 1087 workmen who were retrenched on 8.7.2005, the retrenchment order of 43 workmen were set aside by the Labuor Court on 30.3.2009. The award dated 30.3.2009 was assailed before the Hon'ble High Court and was modified only to the extent of Rs.50,000/- instead of 50% back wages. On the basis of above award the department reinstated the services of retrenched workmen *w.e.f.* 16.9.2009 These persons have now been regularized and presently getting basic pay scale of Rs. 30,000/- per month. Even at the time of reinstatement of these workmen no opportunity was afforded in favour of the petitioner for re-employment. Feeling aggrieved that the above action of the respondent, the petitioner served demand notice dated 24.9.2009 to the respondent copy of the same was sent to Labour-cum-Conciliation Officer, Mandi. The dispute could be settled amicably and Conciliation Officer concluded in the year 2011 informing the petitioner that his case would be sent to the appropriate Government for necessary action. However, petitioner not received any communication from the appropriate Government hence he enquired office of Labour Officer Mandi. He was informed by the dealing hand that failure report has been sent for making reference *vide* report no.708/2009 dated 23.12.2011. Thereafter petitioner waited but did not receive any communication from the appropriate Government and filed an application under RTI Act, 2005 and he was informed by Joint Labour Commissioner that *vide* order dated 29.9.2012 the case of petitioner was declined for adjudication by appropriate Government on ground of delay. The petitioner assailed the said before the Hon'ble High Court *vide* CWP No.644/2018 which was decided on 2.4.2018 granted liberty to the petitioner to approach the respondent by placing additional material on record. The petitioner has filed representation dated 25.6.2018 before appropriate Government explaining the reason for delay and placing on record the additional material but the appropriate Government did not appreciate the representation made by the petitioner and declined to refer the case of the petitioner for adjudication *vide* order dated 22.9.2018. The order dated 22.9.2018 was challenged before the Hon'ble High Court *vide* CWP No.3038/2021 which was finally decided by the Hon'ble High Court on 24.8.2021 and Labour Commissioner was directed to make reference to this court. It is asserted that dispute raised by petitioner vide demand notice dated 24.9.2009 against his unlawful retrenchment *w.e.f.* 8.7.2005 does not suffer from delay and laches. It is prayed that the order of retrenchment dated 8.7.2005 may be set aside as illegal and respondent be directed to reinstate the service of the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

3. Respondent by way of reply raised preliminary objections *qua* maintainability, delay and laches etc. On merits, it is admitted that petitioner was engaged as daily wage beldar *w.e.f.* 8/1999 and was retrenched on 7/2005. It is further asserted that the persons who have been mentioned by the petitioner in para no.5 had worked continuously and completed 240 days in each calendar year. They were regularized *w.e.f.* 11/2008 and the question of violation of Section 25-G of the Act does not arise. Similarly with respect to the persons mentioned in para no.6 it is asserted

that they all were engaged on compassionate ground as their parents had expired. With respect to the persons who have been reinstated by order of the Hon'ble High Court, it is asserted that they have been appointed after adopting codal formalities but petitioner did not file any court so giving him opportunity did not arise. Other averments were either denied and accepted as a matter of record. It is prayed that the petition be dismissed.

4. Petitioner by way of rejoinder denied preliminary objections and reasserted the averments made in the petition and prayed that the petition may be allowed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of service of the petitioner *w.e.f.* 08.07.2005 by the respondent is illegal and unjustified, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the claim petition is not maintainable, as alleged? . . *OPR*.

4. Whether the petitioner was retrenched under Section 25-F of the I.D. Act after following complete procedure as claimed? . . *OPR*.

5. Whether the claim of the petitioner suffers from the delay and latches of six years. If so, its effects? . . *OPR*.

6. Relief

6. The petitioner Bhagwan Chand in order to prove his case produced her affidavit Ext. PW1/A wherein he reasserted the facts stated in the claim petition. He also produced on record retrenchment notice under Section 25-N of the Act Ext. PW1/B, demand notice Ext. PW1/C, mandays chart of Shashi Kant Ext. PW1/D, seniority list Ext. PW1/E and copy of award Ext. PW1/F.

7. Respondent on order to prove their case has examined Er. Vivek Sharma, Executive Engineer, HPPWD, Division Dharampur, District Mandi on oath by way `affidavit RW1/A and also produced on record mandays chart Ext. RW1/B.

8. I have heard the learned Authorized Representative/Counsel for the petitioner as well as learned Dy. District Attorney for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 :Yes

Issue No.2 :decided accordingly

Issue No.3 :No

Issue No.4 :No

Issue No.5 :No

Relief. : Claim petition is partly allowed per operative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.1*

10. The petitioner has stated on oath that he was engaged by department *w.e.f.* December,1998 and he continuously worked upto 7.7.2005 after having completed 240 days in each calendar year his services were illegally retrenched on 8.7.2005 though he was paid retrenchment compensation to the sum of Rs. 10290/-. Further it is the grievance raised by the petitioner in his affidavit that the persons junior to him were retained and were not retrenched. He has also submitted that after his retrenchment department had reinstated the workers but no opportunity of reinstatement was given in his favour. In his cross-examination he has admitted that retrenchment compensation was paid to him and he accepted the same. He further denied that workmen mentioned by him in his affidavit were senior to him. He has also shown ignorance to the effect that workmen mentioned in para no.6 of his claim were engaged on compassionate grounds. He also denied that department has not followed any terms and conditions of the Act. He also denied that his services were retrenched in lawful manner.

11. RW1 Er. Vivek Sharma was cross-examined at length by learned AR/counsel for the petitioner and during the course of his cross-examination he has denied that petitioner worked continuously for 240 days in each year till 7.7.2005. However he admitted that petitioner was retrenched on 8.7.2005 *vide* letter Ext. PW1/B. He further admitted that no permission was sought for retrenchment of petitioner from the appropriate authority. In view of this clear admission made by RW1 it is established that while carrying out the process of retrenchment respondent has not followed the mandatory provisions of Section 25-F (c) of the Act. Further it was the contention of the petitioner that persons who are junior to him were retained by department, provided service benefits and subsequently regularized. RW1 Er. Vivek Sharma admits in his cross-examination that the mandays Ext. PW1/D his is of department and belongs to one Shashi Kant. He also admits that as per this document date of joining of Shashi Kant is January, 2000. Pertinent to mention here that the service of petitioner was engaged even as per the version given by the respondent in their pleadings in the year 1999. RW1 Er. Vivek Sharma has further admitted that as per Ext. RW1/D Shashi Kant was not retrenched and he continued to work in the department. This fact clearly show that the persons junior to petitioner *i.e.* Shahsi Kant ws retained in service by the respondent in violation of the provisions of the Act. RW1 Er. Vivek Sharma has also not denied that Ext. PY belongs to his department *vide* which Shashi Kant was regularized. He has admitted that seniority list Ext. PW1/E has been issued by his department. Perusal of the above seniority list shows that persons junior to the petitioner have been retained in service and are part of the seniority list. Contrary to the contention of the respondent all such appointments are not on compassionate ground only. In the light of above evidence it is clear that the respondent has not followed the principle of 'last come first go' by retaining the persons junior to the petitioner. Similarly even when the services of fresh hands were appointed by the department but the opportunity of re-employment was not given to the petitioner. No notice in this regard issued by respondent has been produced on their behalf. It is hence proved from the evidence on case file that the respondent has not only carried out the termination of services of petitioner in illegal and unjustified manner but also did not follow mandatory provisions of the Industrial Disputes Act in subsequent employments and re-employments. Thus the termination of the services of the petitioner *w.e.f.* 8.7.2005 is illegal and unjustified and liable to be set aside. Issue no.1 is accordingly decided in the favour of petitioner.

*Issue No.2*

12. Petitioner has also produced on record earlier orders of this court Ext. PW1/F and Ext. PY *vide* which the workers retrenched alongwith him have been directed to be reinstated and said position has been upheld by the order of the Hon'ble High Court *vide* judgment Ext. P2. Thus in the facts and circumstances in the present case also the retrenchment of the petitioner is liable to set aside and respondent is directed to reinstate the service of the petitioner forthwith along with seniority and continuity in service from the date of his illegal termination *i.e.* 8.7.2005. Respondent is also directed to pay lump sum compensation to the tune of Rs.50,000/- in lieu of back wages hence issue no. 2 is also decided in the favour of petitioner.

*Issues No. 3 and 4*

13. Both these issues are taken up together for the purpose of adjudication.

14. The main contention raised by the respondent in the present case are that the petitioner was retrenched after payment of due compensation and his services were retrenched on 8.7.2005 and the present petition is not maintainable. It has been discussed while deciding issue no.1 above that while carrying on the retrenchment of the petitioner necessary notice under Section 25-F (c) of the Act was not issued to the appropriate authority which vitiated entire procedure of retrenchment and the claim petition is held to be maintainable, hence issues no. 3 and 4 are decided in the favour of petitioner.

*Issue No.5*

15. Learned Deputy District Attorney for the respondent has vehemently argued that according to petitioner he was retrenched from the services in the year 2005 however he had not raised any dispute till the year 2009. In this regard it is pertinent to peruse the award of this court dated 13.9.2012 the said award in respect of worker who has been worked alongwith petitioner and reference was made. Pertinent to mention here that even though the petitioner who is a daily wage worker had slightly taken time for approaching the labour court and appropriate authority but since the year 2009 he was continuously pursuing the labour dispute and even approached the Hon'ble High Court for seeking an appropriate orders in her favour. The judgment of Hon'ble High Court *vide* which the similar matters have been admitted is dated 20.12.2012. In the light of above facts and circumstances even though industrial dispute was raised in the year 2009 the reference could only be made with the directions of Hon'ble High Court in the year 2022. It cannot be held that the dispute has failed to exists between the parties when the petitioner has raised dispute with labour office and appropriate authority. Hon'ble High Court in **Krishan Pal vs. State of Himachal Pradesh and Anr. 2023 Latest Caselaw 3439 HP** has clearly laid down the terms and conditions on the basis of which the claim of a workman can be judged to be barred by limitation delay and laches etc. Hon'ble High Court has subsequent observed in para no.8 as follows:—

> "8. Hon'ble Apex Court in case titled Prabhakar *v.* Joint Director Sericulture Department and Anr., AIR 2016 Supreme Court 2984, has held that dispute, if any, raised after an inordinate delay cannot be said to exist and there is no live dispute. In the aforesaid judgment, Hon'ble Apex Court has held that if dispute is raised after a long period, it has to be seen as to whether such a dispute still exists or not? In such case, law of limitation does not apply, rather it is to be shown by the workman that there is a dispute in praesenti. If the workman is able to give satisfactory explanation for the laches and delays and demonstrates that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, because of such delay, if dispute no longer remains alive and is to be treated as dead,

then it would be non-existent dispute which cannot be referred. Most importantly, in the aforesaid judgment, Hon'ble Apex Court has held that in those cases where court finds that dispute still existed, though raised belatedly, it is always for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement.

Relevant para of the afore judgment reads as under:

"40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the

effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

16. In the circumstances of the present case also the contention of the petitioner that after his retrenchment, he time and again visited the office of the respondent and requested them to reinstate him was not specifically denied by the respondent though they denied existence of an industrial dispute between the parties. Thereafter since 2015 upto 2022 the petitioner was approaching the Hon'ble High Court with regard to her grievances. In these circumstances it cannot be held that the dispute between the petitioner and respondent cease to exist with the lapse of time. In the light of above circumstances it cannot be held that claim of the petitioner was suffered from delay and laches or was barred by limitation Accordingly issue no. 5 is decided in favour of the petitioner.

*Relief*

17. In view of my discussion on the issues no. 1 to 5 the claim petition succeeds and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. He is also held entitled for seniority and continuity in service from the date of his illegal termination alongwith compensation to the tune of Rs.50,000/- alongwith interest @ 6% from date of illegal termination in year 2005 till realization. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 25/2022

Date of Institution : 31.3.2022

Date of Decision : 30.7.2024

Smt. Kamla Devi w/o Shri Raj Mal, r/o Village Richali, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner*.

*Versus*

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Joint Labour Commissioner:

> "Whether the termination of services of Smt. Kamla Devi w/o Shri Raj Mal, r/o Village Richali, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 09.02.2004 by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. who had worked on daily wages basis as beldar and has raised her industrial dispute *vide* demand notice dated 23.08.2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that petitioner Kamla Devi was appointed by respondent on daily wages basis on muster roll as beldar *w.e.f.* 4.5.1999 and she continued to work upto 8.2.2004. She completed more than 240 days of work in each calendar year and also within the 12 months preceding her illegal retrenchment which allegedly took place on 9th February, 2004. It is alleged that the services of petitioner were retrenched by respondent on 9th February, 2004 along with more than 1600 workmen in the category of beldars and retrenchment compensation was paid under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Thereafter in the month of April/May, 2004 services of more than 1000 workmen were reinstated but opportunity to reinstatement was not afforded to the petitioner in violation of Section 25-H of the Act. The juniors workmen namely Hem Raj s/o Sant Ram was re-engaged but no opportunity of reinstatement was afforded in the favour of the petitioner. It is alleged that principle of 'last come first go' was not followed whereas Subhash

Chand s/o Bhagat Ram, Shashi Kant s/o Bihari Lal, Bidhi Chand s/o Nek Ram, Dharampal s/o Sarwan Ram, Inder Singh s/o Narain Singh, Ajay Kumar s/o Hari Chand and Roshani Devi w/o Nag Ram were retained in service in violation of the provisions of Section 25-G of the Act. After retrenchment the services of petitioner along with 1697 workmen *w.e.f.* 9.2.2004 the respondent in the month of June/July reinstated the services of 1000 workmen. Petitioner approached the respondent and requested that she be provided duty on the basis of her seniority but Assistant Engineer, Sub Division Dharampur verbally stated that department is not in a position to provide her job. The persons who were retrenched *w.e.f.* 9.2.2004 namely Balak Ram s/o Damodar Dass, Rakesh Kumar s/o Chingu Ram, Desh Raj s/o Brestu Ram, Abdul Razzak s/o Salmat Kha, Mansa Ram s/o Chitru Ram, Inder s/o Kanshi Ram etc. were re-engaged in June, July, 2004 even though above named workmen were junior to the petitioner. She was not given any opportunity for re-employment in accordance with the provisions of Section 25-H of the Act read with Rule 78 of Industrial Disputes (Central Rules) 1957. Feeling aggrieved she served demand notice dated 23.8.2010 to the respondent and the copy of the same sent to the Labour-cum-Conciliation Officer, Mandi Zone, District Mandi. The dispute could not be settled amicably however she was informed that her case was sent to appropriate Government. Thereafter she did not receive any communication from the appropriate Government till 2015. When she went to office of the Labour Officer Mandi to enquire about her case she was informed by the dealing hand the failure report in her case has been sent to appropriate Governmnt for making reference vide report no.2819 dated 28.12.2011. Thereafter she waited for sometime but she did not receive any communication from the appropriate Government. She filed an application under RTI and requested to inform the status of her dispute. She was informed by Joint Labour Commissioner *vide* letter dated 2.11.2017 had supplied office order dated 31.3.2012 the office order revealed that the case of the petitioner had been declined for the purpose of adjudication on the ground of delay. Feeling aggrieved she assailed the order dated 29.9.2012 before the Hon'ble High Court *vide* CWP No. 895/2018 whereby the Hon'ble High Court had granted liberty to approach the respondent and place additional material. The petitioner thereafter filed representation dated 18.6.2018 before the appropriate Government explaining the reason of delay however said representation was not appreciated and once again declined to refer the case of the petitioner for adjudication before the Court. Petitioner thereafter challenged order dated 19.9.2018 before the Hon'ble High Court *vide* CWP No. 3039/2021 whereby the Hon'ble High Court had directed the Labour Commissioner, H.P. *vide* order dated 24.8.2021 to make reference to this Court. In compliance order of Hon'ble High Court the appropriate Government *vide* Notification dated 10.3.2022 had sent reference to this Court. The petitioner has prayed that the illegal retrenchment of petitioner dated 9.2.2004 may be ordered to be set aside with direction to respondent to reinstate the petitioner with full back wages, seniority, continuity in service and other consequential benefits. She has also prayed that the payment of litigation cost of Rs.15000/-.

3. Respondent by way of reply raised preliminary objections qua maintainability, petition suffering from delay and laches etc. On merits, it is admitted that the petitioner was engaged as daily wage beldar however according to respondent she was engaged on 11/1999 and she was retrenched on February, 2004. It is denied that retrenchment was in violation of provisions of Section 25-F of the Act. It is asserted that retrenchment compensation was paid to the petitioner. It is further submitted that after retrenchment the petitioner protested by way of Dharna alongwith other workers and thereafter retrenched workmen were re-engaged in a phased manner. Respondent denied that any opportunity of reinstatement was not afforded to the petitioner and asserted that she joined her duty in April, 2004 and thereafter left the job in August, 2004. Mandays in this regard has been produced. It is also asserted that the workers whose name has been mentioned in the claim petition had worked for continuous service of 240 days in each calendar year and consequently they were regularized in November, 2008. It is denied that act and conduct of the respondent is in violation of Section 25-G of the Act. Other averments made in the petition were denied and it was prayed that the petition be dismissed.

4. Petitioner by way of rejoinder denied preliminary objections and reasserted the averments made in the petition and prayed that the petition may be allowed. She also denied that after her retrenchment in February, 2004 she was reinstated in April, 2004 and thereafrer left in the month of August, 2004.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of service of the petitioner *w.e.f.* 09.02.2004 by the respondent is illegal and unjustified, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the claim petition is not maintainable, as alleged? . . *OPR*.

4. Whether the petitioner was retrenched under Section 25-F of the I.D. Act after following complete procedure as claimed? . . *OPR*.

5. Whether the claim of the petitioner suffers from the delay and laches of six years. If so, its effects? . . *OPR*.

6. Whether petitioner has herself abandoned her job in August, 2004. If so, its effect? . . *OPR*.

Relief.

6. The petitioner in order to prove her case produced her affidavit PW-1 and copy of award Ext. P-1, copy of judgment Ext. P-2, demand notice Ext. P-3 and copy of reply Ext. P-4.

7. Respondent has examined Shri Vivek Sharma, Executive Engineer, HPPWD, Division Dharampur, District Mandi on oath by way of affidavit RW1/A. They have produced on record the mandays chart of petitioner Ext. RW1/B.

8. The petitioner has also produced the copy of judgment Ext. PZ, seniority list of daily wage beldar Ext. PY and seniority/year-wise mandays of Shashi Kant *i.e.* Ext. PX.

9. I have heard the learned Authorized Representative/Counsel for the petitioner as well as learned Dy. District Attorney for the respondent at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Decided accordingly

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief. : Claim petition is partly allowed per operative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.1*

11. The petitioner has asserted that she was engaged as a daily wage beldar by the respondent *w.e.f.* 4.5.1999 and she worked till 8.2.2004. She also asserted that she has completed more than 240 days of work in each calendar year and also within 12 months preceding the date of her illegal retrenchment. In this respect respondent has fairly conceded that petitioner was working with them on daily wages as beldar and she had worked till 8th February, 2004. They also admitted that she had completed 240 days of work continuously in each calendar year. It is the assertion made on behalf of respondent that petitioner was actually employed in November, 1999. Even if the date of engagement of the petitioner is considered as November, 1999 she is clearly admitted to have completed 240 days of continuous service at the time of her retrenchment. Respondent has asserted that they had carried out retrenchment proceedings in accordance with the provisions of the Act and also paid due compensation. Petitioner has admitted that the compensation was paid under Section 25-F of the Act, but it is asserted on behalf of the petitioner that mandatory notice under Section 25-F (c) of the Act was never issued by the respondent making the whole procedure of retrenchment void. In this regard it is important to peruse cross-examination of RW1 Shri Vivek Sharma, Executive Engineer he has admitted that petitioner had worked continuously for 240 days in each calendar year till 8.2.2004. He also admitted that petitioner was retrenched on 9.2.2004. He further admitted that no permission was sought for retrenchment of petitioner from appropriate authority. Thus violation of Section 25-F Clause (c) is writ large.

12. It is further the case of the petitioner that after her retrenchment she was not called by the respondent at the time of re-engagement of more than 1000 workers in July, July, 2004. Respondent however contended that the petitioner joined the services in April, 2004 and thereafter left the job out of her own sweet will in month of August, 2004. It is pertinent to mention here that stand of petitioner is that she was never re-engaged by respondent. The respondent has produced the mandays chart showing that the petitioner had worked from April, 2004 to August, 2004 however no record of any payment of wages made to the petitioner in this respect could be produced by the respondent. The respondent have not mentioned that any notice was issued to the petitioner in case she left the job out of her own sweet will. Thus the contention of the respondent to the effect that petitioner had joined the services in April, 2004 and thereafter left the same out of her own free will does not stand prove in this case. It is admitted fact that the petitioner was engaged in year 1999. Ext. PX is admitted to be the mandays chart of one Shri Shashi Kant. RW1 Shri Vivek Sharma has admitted that as per this document the date of joining of Shashi Kant is January, 2000. He further admitted that Ext. PX is of their department regarding Shashi Kant which shows that he was not retrenched and he continued to work in the department. He further admitted that Ext. PY is seniority list issued by his department. Though he has shown ignorance to the suggestion that vide various orders/awards of Labour Court, Dharamshala retrenchment order dated 9.2.2004 of various workers were set aside and all these workers have been reinstated and regularized however the petitioner has produced on record order Ext.P-2 of workman Lohku Ram who was held entitled for reinstatement even though he was directed to be retrenched vide the same order as that of the petitioner in this case. The above evidence shows that not only the petitioner was retrenched without following the mandatory provisions of the Act however subsequently she was not given the due notice for the purpose of re-employment neither the engagement in the service even though the persons junior to her were retained/re-employed. There is nothing on

record to show that the petitioner has abandoned the job as no notice in this regard was issued by the respondent nor any credible documentary evidence existed in this regard. Thus issue no.1 is accordingly decided in the favour of the petitioner.

*Issue No. 2*

13. Petitioner has also produced on record earlier orders of this court Ext. P1 and Ext. PZ *vide* which the workers retrenched alongwith her have been directed to be reinstated and said position has been upheld by the order of the Hon'ble High Court *vide* judgment Ext. P2. Thus in the facts and circumstances in the present case also the retrenchment of the petitioner is liable to set aside and respondent is directed to reinstate the service of the petitioner forthwith alongwith seniority and continuity in service from the date of her illegal termination *i.e*. 9.2.2004. Respondent is also directed to pay lump sum compensation to the tune of Rs.50,000/- in lieu of back wages hence issue no. 2 is also decided in the favour of petitioner.

*Issues No. 3,4 and 6*

14. All these issues are taken up together for the purpose of adjudication.

15. The main contention raised by the respondent in the present case are that the petitioner was retrenched after payment of due compensation and since after her alleged re-engagement in April, 2004 she left her services/abandoned her services in the month of August, 2004 and the present petition is not maintainable. It has been discussed while deciding issue no.1 above that the respondent could not produce any reliable oral or documentary evidence to confirm that the petitioner had in-fact joined the services in April, 2004 and thereafter abandoned the service or any wages have been paid to her in the course of her working days. It is also proved that while carrying on the retrenchment of the petitioner necessary notice under Section 25-F (c) of the Act was not issued to the appropriate authority which vitiated entire procedure of retrenchment and the claim petition is held to be maintainable, hence issues no. 3, 4 and 5 are decided in the favour of petitioner.

*Issue No.5*

16. Learned Deputy District Attorney for the respondent has vehemently argued that according to petitioner she was retrenched from the services in the year 2004 however she had not raised any dispute till the year 2010. In this regard it is pertinent to peruse the award of this court dated 7.9.2013 the said award in respect of worker who has been worked alongwith petitioner and reference was made in the year 2007 and 2008. Pertinent to mention here that even though the petitioner who is a daily wage worker and woman had slightly taken time for approaching the labour court and appropriate authority but since the year 2010 she was continuously pursuing the labour dispute and even approached the Hon'ble High Court for seeking an appropriate orders in her favour. The judgment of Hon'ble High Court *vide* which the similar matters have been admitted is dated 20.12.2012. In the light of above facts and circumstances even though industrial dispute was raised in the year 2010 the reference could only be made with the directions of Hon'ble High Court in the year 2022. It cannot be held that the dispute has failed to exists between the parties when the petitioner has raised dispute with labour office and appropriate authority. Hon'ble High Court in **Krishan Pal vs. State of Himachal Pradesh and Anr. 2023 Latest Caselaw 3439 HP** has clearly laid down the terms and conditions on the basis of which the claim of a workman can be judged to be barred by limitation of delay and laches etc. Hon'ble High Court has subsequent observed in para no.8 as follows:—

> "8. Hon'ble Apex Court in case titled Prabhakar *v.* Joint Director Sericulture Department and Anr., AIR 2016 Supreme Court 2984, has held that dispute, if any, raised after an

inordinate delay cannot be said to exist and there is no live dispute. In the aforesaid judgment, Hon'ble Apex Court has held that if dispute is raised after a long period, it has to be seen as to whether such a dispute still exists or not? In such case, law of limitation does not apply, rather it is to be shown by the workman that there is a dispute in praesenti. If the workman is able to give satisfactory explanation for the laches and delays and demonstrates that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, because of such delay, if dispute no longer remains alive and is to be treated as dead, then it would be non-existent dispute which cannot be referred. Most importantly, in the aforesaid judgment, Hon'ble Apex Court has held that in those cases where court finds that dispute still existed, though raised belatedly, it is always for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement.

Relevant para of the afore judgment reads as under:

"40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation

has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

7. In the circumstances of the present case also the contention of the petitioner that after her retrenchment, she time and again visited the office of the respondent and requested them to reinstate her was not specifically denied by the respondent though they denied existence of an industrial dispute between the parties. Thereafter since 2015 upto 2022 the petitioner was approaching the Hon'ble High Court with regard to her grievances. In these circumstances it cannot be held that the dispute between the petitioner and respondent cease to exist with the lapse of time. In the light of above circumstances it cannot be held that claim of the petitioner was suffered from delay and laches or was barred by limitation. Accordingly issue no.5 is decided in favour of the petitioner.

*Relief*

18. In view of my discussion on the issues no. 1 to 6 the claim petition succeeds and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. She is also held entitled for seniority and continuity in service from the date of her illegal termination alongwith compensation to the tune of Rs.50,000/- along with interest @ 6% from date of illegal termination in year 2004 till realization. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 98/2019

Date of Institution : 17.9.2019

Date of Decision : 31.7.2024

Shri Asha Ram s/o Shri Bali Ram, r/o Village Geharwin (Bagral), P.O. Geharwin, Tehsil Jhanduta, District Bilaspur, H.P. . . *Petitioner*.

*Versus*

The Divisional Forest Officer, Forest Division Bilaspur, District Bilaspur, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For Respondent : Sh. Anil Sharma, Ld. DDA

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner:—

> "Whether time to time termination of the daily wages services of Shri Asha Ram s/o Shri Bali Ram, r/o Village Geharwin (Bagral), P.O. Geharwin, Tehsil Jhanduta, District Bilaspur, H.P. *w.e.f.* 01-06-2009 to October, 2016 and final termination during November, 2016 by the Divisional Forest Officer, Forest Division Bilaspur, District Bilaspur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the petitioner was engaged by the respondent on daily wage basis as forest worker on muster roll by Divisional Forest Officer, Forest Division Bilaspur *w.e.f.* 1.4.2004. At the time of his engagement he was not given any appointment

letter. However he continued to work with the respondent upto October, 2016. His services were disengaged by the respondent department from 2004 to 2016 by giving fictional breaks and not letting him to complete 240 days for the purpose of Section 25-B of the Industrial Disputes Act, 1947 and finally terminated in November, 2016. Petitioner raised a demand notice under the Industrial Disputes Act, 1947 dated 21.12.2016 regarding reinstatement of his service with consequential benefits and forwarded to it Labour-cum-Conciliation Officer, Bilaspur. The department filed reply of his demand notice before Conciliation Officer. During the conciliation proceedings department did not amicably settled dispute between the parties and it was forwarded to Labour Commissioner for necessary action. It is further asserted that at the time of giving fictional breaks from 2004 to 2016 till his final termination of service in November, 2016 department had not given any show cause notice to him nor informed him about work and funds not being available also that his services no more required by the department. His termination amounted to retrenchment and no retrenchment compensation or notice was ever given by respondent department. In the light of these averments the petitioner has prayed that the unfair labour practices of giving fictional breaks by the department and his final termination may be declared as illegal, arbitrary and unjustified. It is further prayed that the petitioner be held entitled for reinstatement in service with full back wages, seniority and continuity in service alongwith all consequential benefits.

3. The respondent in their reply raised preliminary objections qua maintainability, suppression of material fact, estoppel, petition being bad for delay and laches and petitioner having not completed 240 days of work preceding the date with reference to which the calculation is to be made under Section 25-B of the Industrial Disputes Act, 1947. On merits, it is asserted that the petitioner was merely engaged in the department as fire watcher since June 2009 for a period of 30 days. The duties of fire watcher was only seasonal as it was required whenever there was fire breakout in the forest. He was engaged as per availability of work time to time and worked on bill basis only. The seasonal work in the department like raising of nurseries and plantation and persons engaged only as per availability of work and funds. It is also asserted that being fire watcher he had not completed 240 days in any calendar year hence his name did not appear in the seniority list. According to respondent there is no violation of provisions the Industrial Disputes Act, 1947 including Sections 25-B, 25-G and 25-H of the Industrial Disputes Act, 1947. It is asserted that the question of violation of principle of 'first come last go' also does not arise in this case. It is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections have been denied and facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether act of time to time termination of services of the petitioner *w.e.f.* 01-06-2009 to October, 2016 and final termination during November, 2016 by the respondent is/was illegal and unjustified, as alleged? . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . *OPP*.

3. Whether the claim petition is not maintainable, as alleged? . . *OPR*.

4. Whether the petitioner has not come to the court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . *OPR*.

5. Whether the petitioner is estopped from filing the claim petition by his act, conduct and acquiescence, as alleged? . . *OPR*.

6. Whether the claim petition is bad on account of delay and laches, as alleged? . . *OPR*.

Relief.

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he reiterated the fact stated in the petition.

7. Respondent has examined Shri Awani Bhushan Rai, Divisional Forest Officer, Bilaspur by way of affidavit RW1/A wherein he reiterated the facts stated in the reply. He has tendered in evidence seniority list as on 31.12.2014 in respect to daily wager Ext. RW1/B, office order regarding the record that was destroyed as Ext. RW1/C, muster rolls issued to forest Guard Nand Lal Ext. RW1 till the year 2009 Ext. RW1/D1 to D3, muster roll issued to Kehar Singh Ext. RW1/D4 to D7, muster roll issued to Mans Ram Ext. RW1/D9, another muster roll Ext. RW1/D10 to Ext. RW1/D13. He also produced on record mandays chart in respect of petitioner Ext. RW1/E, bills issued in respect of petitioner Ext. RW1/F1 and F2, quotations Ext. RW1/F3, F4, F5 and another bills Ext. RW1/F6, quotation Ext. RW1/7. He also tendered in evidence several other bills and quotations in respect of petitioner and other workers which are Ext. RW1/F8 to F35. He produced the copy of cheque of Rs.18870/- in respect of petitioner Ext. RW1/G. He also tendered in evidence various bills and quotation in respect of petitioner and other workers Ext. RW1/H1 to H5, bank account slip dated 24.7.2012 Ext. RW1/J, another quotations and bills Ext. RW1/K1 to K54 and copy of letter dated 10.1.2017 alongwith address and account numbers in respect of petitioner and several other workers Ext. RW1/L.

8. I have heard the learned Authorized Representative for the petitioner as well as learned Deputy District Attorney for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Decided accordingly

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief. : Claim petition is allowed per operative portion of the Award.

## REASONS FOR FINDINGS

*Issue No.1*

10. The petitioner has deposed on oath that he was engaged as daily wage worker in Divisional Forest Officer, Forest Division Bilaspur w.e.f. 1.4.2004 and he continued to work upto

year 2016. RW1 Shri Awani Bhushan Rai, Divisional Forest Officer, Forest Division Bilaspur has stated that petitioner was engaged as fire watcher in the department on 6.2.2009 and not on 4.2.2009 as alleged by the petitioner. Contrary to the plea of petitioner according to respondent, the petitioner never completed 240 days of continuous service in any calendar year. Respondent also asserted that petitioner was not disengaged intentionally but was engaged only as per availability of work and funds and his services were not taken due to non availability of work and funds. Petitioner however alleges that he was intentionally given fictional breaks in his services to prevent him from completing 240 mandays and get entitled for the service benefits.

11. The mandays chart with respect to the petitioner is produced on record Ext. RW1/E. The said mandays chart shows that initially in June, 2009 petitioner was engaged on bill basis for 30 days, thereafter on different intervals till 2016 his services were engaged on daily wages with mandays mentioned and alternatively on bill basis without mentioning mandays dedicated for completion of work. Bills which were prepared in respect of work done by the petitioner are Ext. RW1/F1 to F35, Ext. RW1/H1 to H5 and Ext. RW1/K4 to K54.

12. According to the respondent the petitioner has worked merely in the capacity of fire watcher which according to respondent is purely a seasonal work *i.e.* whenever forest catches fire. The documents produced by respondent reveal otherwise. The bills produced on record show that petitioner was engaged time to time not only for fire protection but also for filling of pits, digging of holes, fencing wooden, fencing of poles and cutting branches, preparation of forest posts, fixation of forest posts, carrying plants for plantation and various types of work. Thus in addition to fire watching the petitioner performed multifarious activities of forest service with the respondent. Though, it is contended on behalf of the respondent that the work on bill basis was purely of a seasonal character and dependent on availability of work and funds. This contention on behalf of the respondent is however falsified from the seniority list/screening committee of daily wagers for the year 2017 who completed five years service on 31.3.2018 Ext. PA. Considering from the year 2009 *i.e.* when according to respondent the petitioner had started his service with the respondent, the workers mentioned in the list Ext. PA are shown to have done various kinds of work *i.e.* plantation, fencing, lantana uprooting, maintenance of building, maintenance of nursery, fire watching etc. and also as per availability of financial budget. The said list also shows that the workers appointed after 2009, completed 240 days of work were continued as daily wagers and were made part of the seniority list of the department. In the similar interval of time the petitioner is never shown to have worked on daily wages and deliberately his mandays were concealed by showing work done on bill basis. The muster roll Ext. RW1/D11 depict that for the year 2008-2009 muster rolls were being prepared but no attendance chart of the petitioner was prepared in order to avoid calculating the number of mandays put in by the petitioner for the work done by him. Hon'ble High Court of H.P. in **Ram Singh vs. State of Himachal Pradesh and others in CWP No.789 of 2024, decided on 4.7.2024** has observed in para nos. 5 and 6 as follows:—

> "5. It is not in dispute that the petitioner is serving with the respondents-Department since 2015 continuously by putting in more than 240 days in each calendar. It appears that in order to deny such kind of workmen, the benefits of regularization, respondent-State has come with the nomenclature of "bill basis" but, fact of the matter still remains that be it a daily wager or a bill basis worker, he is serving the Department regularly putting in more than 240 days in each calendar.
>
> 6. This Court of the considered view that the distinction, which is now being created by the respondents-Department between a daily wage worker and a bill base worker is violative of Article 14 of the Constitution of India. Be it a daily wage worker or a bill base worker, he is rendering the same service to the Department. Therefore, in the absence of their being any intelligible differentia between a daily wage worker and bill

base worker, the classification that has been made by the Department cannot pass the touch stone of Article 14 of the Constitution of India.

13. Considering the fact that petitioner had continued to work from 2009 to 2016 and respondent concealed the mandays of petitioner, he can be held to have completed 240 days of work in each calendar year of his services.

14. The mandays chart Ext. RW1/E also exposed deliberate action on the part of the respondent to give fictional breaks in continuity of the service of the petitioner. As already mentioned the petitioner was not merely employed on seasonal basis but deliberate intermittent breaks were given by depiction of his work on bill basis and subsequently on daily wage basis. The conduct of the respondent appears to be discriminatory as the issuance of muster rolls by the respondent with respect to other employees was continued during that period and their services were also counted for the purpose of fixing their seniority and the petitioner however was intentionally deprived of his legal right. The alternative change in service condition of the petitioner without following the statutory provisions of the Industrial Disputes Act and clearly amounted to unfair trade practices on the part of the respondent. In the light of the evidence produced before this court it is clear that time to time termination of the services of the petitioner w.e.f. year 2009 to October, 2016 and final termination during November, 2016 was illegal and unjustified and in violation of Sections 25-B, 25-G and 25-H of the Industrial Disputes Act. The issue no.1 is accordingly decided in favour of the petitioner.

*Issue No. 2*

15. The petitioner has prayed that since he rendered his service from the year 2004 to 2016 and the fictional breaks as well as final termination was in violation of the provisions of the Industrial Disputes Act he is entitled for reinstatement, compensation and also full back wages, seniority and continuity in service. Petitioner has stated in his deposition that he was not gainfully employed after the period of his final termination. However no other evidence in this regard could be produced by the petitioner. It is also clear that even at the time of grant of fictional breaks in his services the petitioner was being paid on bill basis. In these circumstances and on the basis of evidence produced before this court the petitioner is held entitled for reinstatement in service *w.e.f.* the date of his final termination along with seniority and continuity in service and compensation to the tune of Rs. 50,000/- along interest, hence issue no. 2 is decided accordingly.

*Issues No.3 to 6*

16. All the issues shall be taken up together for the purpose of adjudication.

17. The onus of proving these issues on the respondent the maintainability of the claim petition was contested primary on the grounds that the petitioner had not completed 240 days of continuous service. Facts to the contrary appeared from the record which shows that though the petitioner has worked continuously from the year 2009 to 2016 his muster rolls and mandays were deliberately concealed/not prepared by the respondent. There is nothing to show that the petitioner had suppressed any material facts or the act and conduct of the petitioner would entitled him relief as claimed. The petition is also not bad on account of any delay and laches. Accordingly these issues are decided in favour of the petitioner.

*Relief*

18. In view of my discussion on the issues no. 1 to 6 the claim petition succeeds and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. He is

also held entitled for seniority and continuity in service from the date of his illegal termination along with compensation to the tune of Rs.50,000/- along with interest @ 6% from date of illegal termination in year 2016 till realization. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 76/2022

Date of Institution : 20.6.2022

Date of Decision : 31.7.2024

Shri Sanjeev Kumar s/o Shri Ravi Kumar, r/o Village Krishna Nagar, P.O. Hamirpur, Tehsil & District Hamirpur, H.P. . . *Petitioner*.

*Versus*

The Deputy Director, Horticulture, Hamirpur, District Hamirpur, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

For Respondent : Sh. Anil Sharma, Ld. DDA

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Joint Labour Commissioner:

"Whether the action of the employer *i.e.* the Deputy Director Horticulture, Hamirpur, District Hamirpur, H.P. not to convert the services of Shri Sanjeev Kumar s/o Shri Ravi Kumar, r/o Village Krishna Nagar, P.O. Hamirpur, Tehsil & District Hamirpur, H.P. *w.e.f.* July, 2020 on the post of daily wager, after completion of continuous service or more than 8 years as a part time worker, as per policy of the Himachal Pradesh Government is legal and

justified? If not, what relief of service benefits the above aggrieved workman is entitled to as per demand notice dated 28-10-2020 (copy enclosed) from the above employer?"

2. The brief facts as stated in the claim petition submitted on behalf of petitioner is that his services were engaged by the respondent as part-time Class-IV Sweeper against the vacant post and with the prior permission from the office of Director Horticulture, Government of H.P. Shimla and petitioner continued discharging his duties with satisfaction of the respondent's superiors till 15.8.2020. Government *vide* notification No. Per (AP-B) F(1)/2016 dated 5.2.2020 addressed to (i) All the Administrative Secretaries to the Government of H.P. (ii) All the Heads of Department, H.P. (iii) All the Deputy Commissioner, H.P. to regulate the services of part-time workers and the directions passed by the government to all the government department and government head decided that part-time workers completing 8 years of continuous service on 31.3.2020 and 30th September, 2020 will be converted into daily wager subjected to following terms and conditions therein. The part-time Class-IV workers after completing 8 years of continuous service as on 31.3.2020 and 30th September, 2020 were to be made daily wager. Posts so vacated by part-time workers would be abolished. It is alleged that after issuance of notification by the Government of H.P. the government made policy to regulate the policy of part-time worker to convert to daily wager. The petitioner represented to the Horticulture Department Shimla regarding conversion of his services to daily wager and full time work but no action was taken by the department. It is alleged that the respondent did not convert the services of the petitioner to the post of daily wager as full time worker in accordance with the policy of the Government hence he raised his demand notice dated 28.10.2020 copy of the same was forwarded to the office of Labour Officer-*cum*-Conciliation Officer, Bilaspur, District Bilaspur, H.P. The Conciliation Officer started conciliation under Section 12(4) of the Industrial Disputes Act, 1947 but during the conciliation before him respondent has not accepted demand of petitioner and the settlement failed. The dispute was concluded by authority and report under Section 12 (4) of the Industrial Disputes Act, 1947 was referred to the office of Labour Commissioner, H.P. by this report No.LO/BZ/ID/11/2016-20 dated 21.1.2020. The Labour Commissioner has made above reference before this court. It is alleged that respondent has violated the direction passed by the government of H.P. *vide* Annexure P-1 and as such the petitioner is still working as part-time basis and is entitled to conversion to the post of daily wager *w.e.f.* 1.10.2020. The petitioner has also alleged that he is entitled to the fixed enhanced wages by State Government. It is alleged that respondent has violated the provisions of Article 14 and 16 and 21 of the Constitution of India. It is alleged that the act and conduct of respondent amounted to unfair labour practice to not to convert the petitioner to the post of sweeper on daily wage w.e.f. 1.10.2020. It is submitted that the respondent may be directed to convert the petitioner from post of part-time sweeper as daily wager *w.e.f.* 1.10.2020 and his services may be considered for the purpose of regularization as per policy framed and operated by the State Government. Petitioner also prayed that respondent be directed to restore his seniority as daily wager *w.e.f.* 1.10.2020 for the purpose of regularization as per policy of the State Government.

3. Respondent by way of reply raised preliminary objections qua maintainability and suppression of material facts by the petitioner. On merits it is denied that the services of the petitioner were engaged by the respondent as part-time Class-IV sweeper against a vacant post or with permission of office of Director, Horticulture, Shimla-2. It is asserted that petitioner was wrongly and without followed the codal formalities appointed by Dy. Director of Horticulture Shri Prem Chauhan who now stand retired. As per the notification No. Fin.1-C(14)/83 dated 6th September, 1995 which is annexed with the reply. It is further submitted that at that time there was no sanction post with the department and thus the action of the then Dy. Director, Horticulture was illegal, arbitrary and against an existing policy of State Government. The fact was brought to the knowledge of higher officials of the department and necessary action had already been taken against the erring official. The petitioner made a representation to the department and his case was sent to Director, Horticulture Shimla. His case was turned down with the reason that no prior

sanction as obtained by Horticulture Department as well as financial department. The petitioner was intimated accordingly about his representation. It is also asserted that respondent adequately replied to the demand notice submitted by petitioner. According to respondent they have not violated the provisions of the Government policy and had followed the direction issued by the government from time to time with regard to daily wager/full time worker. The appointment of petitioner is alleged to be illegal, arbitrarily done by the then Dy. Director of Horticulture, Hamirpur. It is asserted that respondent is not liable for any unfair labour practice neither the act of the respondent was unjustified, arbitrary and unconstitutional. The relief which has been prayed by the petitioner has also been denied and it is asserted that petitioner is not entitled for consideration of any seniority for the purpose of his regularization.

4. Petitioner by way of rejoinder denied the preliminary objections and reasserted the facts stated in the claim petition.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the services of the petitioner should have been converted from part time worker to daily wager worker as per policy of State Government, as claimed by him?

2. If issue no.1 is proved in affirmative, to what service benefit, and relief, the petitioner is entitled to? . . *OPP*.

3. Whether the claim petition is not maintainable, as alleged? . . *OPR*.

4. Whether the petitioner has not come to the Court with clean hands and suppressed the material facts. If so, its effects? . . *OPR*.

Relief.

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A along with copy of notification regarding regularization policy of part time workers dated 5.5.2020 Ext. PW1/B and representation dated 16.8.2020 Ext. PW1/C.

7. Respondent has examined Shri Rajeshwar Parmar, Dy. Director, Horticulture Hamirpur, District Hamirpur, H.P. by way of affidavit Ext. RW1/A wherein he asserted the facts stated in the reply. He tendered in evidence copy of letter dated September, 2022 Ext. RW1/B, copies of show causes dated 17th October, 2022 Ext. RW1/C, copies of show cause notices dated 5.11.2022 Ext. RW1/D, copy of letter dated 9th July, 2020 Ext. RW1/E, letter dated 20th July, 2020 Ext. RW1/F, letter dated 2.9.2020 Ext. RW1/G, another letter dated 16.8.2021 Ext. RW1/H and copy of posting/appointment letter from Shimla Cleanways dated 31.5.2022 Ext. RW1/J.

8. I have heard the learned Authorized Representative for the petitioner as well as learned Deputy District Attorney for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Relief. : Claim petition is dismissed per operative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.1 & 2*

10. Both these issues shall be taken up together for the purpose of adjudication.

11. Petitioner Sanjeev Kumar has stated on oath that he was engaged by the department as part time sweeper against vacant post *w.e.f.* 21.6.2012. Contrary to this RW1 Rajeshwar Parmar, Dy. Director Horticulture, Hamirpur has deposed that the petitioner was engaged as sweeper on contract wages purely on temporary basis in the office for cleaning office accommodation *w.e.f.* 21.6.2021 to 31.5.2022 and thereafter he was appointed as sweeper through Shimla Cleanways *w.e.f.* 1.6.2022 onwards. He has further submitted that at that time of the engagement of the petitioner there was no sanctioned post with the department and the action of the then Dy. Director Horticulture is alleged to be illegal, arbitrary and against the existing policy of the State Government. The petitioner during the course of his cross-examination has shown ignorance to the suggestion that at the time of his appointment the post was not sanctioned hence selection process did not take place. He admitted that post was not advertised and no candidate was called for interview of this post. He expressed his ignorance to the suggestion that the then Dy. Director Horticulture had not taken any sanction from the department of Government to fill up the post. He further expressed his ignorance to the suggestion that his representation was rejected by the department for the reason that no sanction post was available. RW1 Rajeshwar Parmar has admitted in his cross-examination that the petitioner was appointed on hourly basis i.e. four hours per day. He also admitted that petitioner has completed 8 years services as on 31.3.2020 however he has denied that the case of the petitioner was covered as per policy Ext. PW1/D. He explained that initially engagement of petitioner was illegal and hence there was no question of regularization of the services of the petitioner. Accordingly his services were not converted into daily wager. He also admitted that the department processed the case of the petitioner for conversion into daily wager however government declined the proposal. He denied that the petitioner was never intimated about the said decision of the government. He also denied that they have changed the terms and conditions of the work done by the petitioner. He also admitted that presently the petitioner was working for 4 hours through outsource.

12. The fact which emerges from the evidence before the court is that petitioner has approached this court on the basis of instructions Ext. PW1/B which are the policy to regulate the services of the part time worker. It is not a disputed fact that the petitioner has worked almost for 8 years on part time basis consequently he has applied for conversion of his services to daily wager and subsequently his consideration for the purpose of regularization as per government policy. The representation moved by the petitioner before the government is Ext. PW1/C.

13. Respondent has however produced on record Ext. RW1/B which are the instructions issued by Financial Commissioner, Government of Himachal Pradesh to All Administrative Secretaries, Government of H.P., All Heads of Department, All Managing Direcot, All Vice Chancellors of Universities, H.P., All Special Secretaries/Addl. Secretaries/Jt. Secretaries/Deputy Secretaries to the Government of H.P. and All the Deputy Commissioners, H.P. regarding need for economy without impeding the pace of development-revision of economy instructions and issue of financial guidelines. Accordance with the directions there was full power upto DDO level for all daily waged/part-time employees in position as on 28th February of the preceding financial year.

Provided that this power shall not confer the right to fill up any vacancies in daily waged personnel resulting from any cause whatsoever without concurrence of Financial Department. Provided further that this restriction will not apply to sanctioned posts of part time sweepers. It was also mentioned that no new posts on daily wage part-time shall be created without prior concurrence of Finance Department.

14. Consequent to the above instructions the engagement of the petitioner was considered as an illegal and arbitrary and beyond the powers of Dy. Director Horticulture at the relevant time. Since there was no sanction post with the department at the relevant time action of the then Dy. Director Horticulture being arbitrary, illegal and against the existing policy of the State Government was subjected to departmental proceedings. The various show cause notices which have been in this regard have also been produced on case file.

15. Learned Authorized Representative/Counsel for the petitioner has vehemently argued that even if the initial appointment of the petitioner was irregular or illegal however, since he has worked on temporary basis continuously for substantial period of time his services could not be disregarded for the purpose of conversion to daily wager and regularization without any fault of his part.

16. Hon'ble Supreme Court in **Union of India vs. Ilmo Devi AIR 2021 SC 4855** has clarified the position of law in the similar kind of circumstances as in the present case. The Hon'ble Supreme Court has laid down in para nos. 8.5 and 8.9 which reads as follow:—

"8.5 Even the regularization policy to regularize the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue Mandamus and/or issue mandatory directions to do so. In the case of R.S. Bhonde and Ors. (supra), it is observed and held by this Court that the status of permanency cannot be granted when there is no post. It is further observed that mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularization is done. 8.6 In the case of Daya Lal & Ors. (supra) in paragraph 12, it is observed and held as under:—

"12.We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, adhoc or daily-wage service for a long number of

years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees.

The right to claim a particular salary against the State must arise under a contract or under a statute.

[See State of Karnataka *v.* Umadevi (3) [(2006) 4 SCC 1], M. Raja *v.* CEERI Educational Society [(2006) 12 SCC 636], S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279], Kurukshetra Central Coop. Bank Ltd. *v.* Mehar Chand [(2007) 15 SCC 680] and Official Liquidator v. Dayanand [(2008) 10 SCC 1.] 8.7 Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

8.8 Applying the law laid down by this court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order, more particularly, directions in paragraphs 22 and 23 are unsustainable and beyond the power of the judicial review of the High Court in exercise of the power under Article 226 of the Constitution. Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularization policy dated 30.06.2014, which is absolutely in consonance with the law laid down by this Court in the case of Umadevi (supra), which does not apply to the part-time workers who do not work on the sanctioned post. As per the settled preposition of law, the regularization can be only as per the regularization policy declared by the State/Government and nobody can claim the regularization as a matter of right dehors the regularization policy. Therefore, in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularization under the regularization policy dated 30.06.2014.

8.9 Though, we are of the opinion that even the direction contained in paragraph 23 for granting minimum basic pay of Group 'D' posts from a particular date to

those, who have completed 20 years of part-time daily wage service also is unsustainable as the part-time wagers, who are working for four to five hours a day and cannot claim the parity with other Group 'D' posts. However, in view of the order passed by this Court dated 22.07.2016 while issuing notice in the present appeals, we are not quashing and setting aside the directions contained in paragraph 23 in the impugned judgment and order so far as the respondents' employees are concerned".

17. It is clear from the ratio laid down by the Hon'ble Supreme Court as referred to above that in excess of any sanction post no specific directions can be made by this court to consider the services of the petitioner for the purpose of regularization. Even at the time of engagement of the petitioner there is nothing to show that any sanctioned post was vacant and the petitioner was working against the said sanctioned post or was engaged in accordance with the rules and procedure framed by the Government. The appointment of the petitioner at the initial stage was not only illegal however due to absence of the sanctioned post his services cannot be considered for the purpose of conversion to daily wager and regularization. At present also the petitioner is working through outsource agency and hence he could not be declared retrenched from his service. The petitioner was never engaged on daily wages but merely a part time employee. In this contest the petitioner cannot claim that his services may be considered for the purpose of regularization beyond the policy framed by the Government in this regard. Issues no.1 and 2 are accordingly decided in favour of the respondent.

*Issues No. 3 and 4*

18. The maintainability of petition was challenged primarily on the ground that the appointment of the petitioner was illegal and also on the ground that at that time there was no sanctioned post of sweeper in the respondent department. Petitioner has asserted that he was appointed against vacant post but no documentary evidence in this regard could be produced by the petitioner. In these circumstances the claim of the petitioner is not maintainable and he has suppressed the fact that there was no sanctioned post of sweeper in the respondent department at the relevant time. Issues no. 3 and 4 are also decided in favour of the respondent.

*Relief*

19. In view of my discussion on the issues no. 1 to 4, the claim petition is dismissed and petitioner cannot be held entitled to any relief as claimed by him. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-**CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 445/2015

Date of Institution : 29.10.2015

Date of Decision : 31.7.2024

Shri Gian Chand s/o Shri Paras Ram, r/o Village and Post Office Udeen, Tehsil Pangi, District Chamba, H.P. . . *Petitioner*.

*Versus*

The Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P. . . *Respondent*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv

For Respondent : Sh. Anil Sharma, Ld. DDA

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner:

> "Whether the industrial dispute raised by the worker Shri Gian Chand s/o Shri Paras Ram, r/o Village and Post Office Udeen, Tehsil Pangi, District Chamba, H.P. before the Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P. *vide* demand notice dated 11.04.2012 regarding his alleged illegal termination of services during year, 2006 suffers from delay and laches? If not, Whether termination of the services of Shri Gian Chand s/o Shri Paras Ram, r/o Village and Post Office Udeen, Tehsil Pangi, District Chamba, H.P. by the Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P. during year, 2006 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. After receipt of the above reference a corrigendum reference dated 16th November, 2019 has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner which reads as follow:—

> "Whereas a reference has been made to the Ld. Labour Court-*cum*-Industrial Tribunal, Dharamshala, District Kangra, H.P. *vide* notification of even no. dated 21-10-2015 for legal adjudication. However inadvertently the correct facts could not be mentioned about the date of termination of the workman in the said notification Therefore, the date of termination of the workman may be read as "August, 2008 instead of year 2006" as alleged by workman".

3. The brief facts as stated in the claim of the petitioner as per amended claim petition are that the petitioner was engaged by department during year 1994 in Range Killar on muster roll on daily waged basis. After his appointment on muster roll he was not given any appointment order nor any casual card/attendance card was provided to him despite the guidelines to this effect laid down by the Hon'ble High Court of H.P. It is alleged that the services of the petitioner were engaged and disengaged by the department by giving him fictional breaks from year 1994 to July,

2008 not letting him to complete 160 days in each calendar year for the purpose of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). These breaks continued upto July, 2008. Where after the services of the petitioner were finally terminated by the department in August, 2008. No show cause notice was ever issued to the applicant/petitioner for any alleged misconduct nor one month pay in lieu of notice period and retrenchment compensation was paid to him thus the termination of the petitioner is alleged to be illegal nullified and void despite the fact that he has completed more than 160 days in a year prior to his termination. Earlier in 2002 the services of petitioner were terminated by giving him fictional breaks the petitioner approached before Hon'ble Administrative Tribunal and on 6.5.2003 Hon'ble Administrative Tribunal made an order to re-engage the service of petitioner wherever the work was available. His services were re-engaged in the month of May, 2003 and continued upto October, 2003. Thereafter he was again terminated from November, 2003. It is alleged that persons who were working along-with the petitioner were continuously engaged without any break and new persons were also engaged by the department from time to time who have not been given any fictional breaks. The principle of 'last come first go' was not followed by the respondent as such persons junior to the petitioner were retained without any breaks namely Bansi Lal, Noori, Tulsi Ram, Dhian Chand, Man Singh, Up Sain, Janam Singh, Amar Nath, Bhender Lal, Dinna Nath, Vijay Kumar and Smt. Bhatto Devi. It is alleged that the petitioner thereafter raised industrial dispute against the department and copy of same was sent to Labour Officer, Chamba for necessary action. The dispute was not amicably settled and failure report was sent to the Labour Commissioner, H.P. for making of reference. The petitioner has alleged that persons working with him now have been regularized by the department. The petitioner has also submitted that though there have been delay in filing the demand notice however on the various other occasions the Hon'ble High Court of H.P. had condoned the delay in raising the industrial dispute even to the extent for 9 year and 11 years. He asserts that industrial dispute raised by him does not suffer from any delay and laches as it has been laid down by Hon'ble Apex Court that the workman can raise any dispute at any stage of time and provisions of Section 137 of Limitation Act, 1963 were not applicable to the Industrial Disputes Act, 1947. In the light of above averments the petitioner has prayed that illegal breaks period *w.e.f.* 1994 to 2008 may be set aside and respondent be directed to count this period in continuity of service of the petitioner for the purpose of his regularization. He has also prayed for wages of the break period. The petitioner has prayed that his final termination order w.e.f. August, 2008 may be set aside and he be reinstated in his service along full back wages, seniority, continuity in service along with all consequential service benefits.

4. In reply to the amended claim petition the preliminary objections *qua* maintainability, work done by petitioner being seasonal in nature, the petitioner having not completed 160 days of work in a year preceding his disengagement, cause of action, delay and laches and suppression of material facts etc. have been raised. On merits, it is asserted that petitioner was engaged in Sach Range, Forest Division on muster roll basis and not in Killar Range *w.e..f* 1994. It is submitted that he intermittently worked with respondent department as daily wage Mazdoor. It is also asserted that the services of petitioner were never disengaged or terminated but he worked with department from year 1994 to the year 2008 intermittently and finally left the work at his own sweet will. The department has not given any fictional breaks. It is also denied that the department did not allow the petitioner to complete 160 days of work in a year. It is further submitted that the services of the persons mentioned by the petitioner have been regularized after completion of 8 years keeping in view available vacancy in the department with approval of H.P. Government. Other averments made in the petition were denied and it is asserted that since there was no violation of the provisions of the Act. The petitioner was not entitled for any relief as prayed.

5. By way of rejoinder the petitioner denied preliminary objections and reasserted the facts stated in the claim petition.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:-

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 11.4.2012 *qua* his termination of service during year, 2008 by respondent suffers from the vice of delay and laches as alleged? . . *OPP*. (*vide* amended petition)

2. Whether termination of service of petitioner by the respondent during year 2006 is/was illegal and unjustified as alleged? . . *OPP*. (*vide* amended petition)

3. Whether the claim petition is not maintainable, as alleged? . . *OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? . . *OPR*.

Relief.

7. The petitioner in order to prove his case produced his affidavit PW-1 wherein he reiterated the fact stated in the petition.

8. Respondent has examined Shri Devinder Singh Dhadwal, Divisional Forest Offier, Forest Division, Killar, Tehsil Pangi, District Chamba, H.P. by way of affidavit RW1/A wherein he reiterated the facts stated in the reply and also produced mandays chart Ext. RW1/B, statement showing daily wagers who have completed five years of service Ext. RW1/C, seniority list Ext. RW1/D and year-wise mandays chart of workers mentioned therein Ext. RW1/E.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Deputy District Attorney for the respondent at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : No

Relief. : Claim petition is partly allowed per operative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.2*

11. Petitioner Gian Chand has stepped into witness box and deposed that he was engaged *w.e.f.* from 1994 and worked upto July, 2008. He worked intermittently upto July, 2008 and could not complete 160 days *w.e.f.* year 2000 per year to 2008. He alleged that respondent gave intentionally fictional break in order to debar him from continuous service. His services were finally terminated in the year 2008. He also alleges that at the time of his termination persons junior to him were retained in service. In cross-examination he has denied that he was not given fictional

breaks as he left the work out of his own free will. Specific allegations have been made on behalf of respondent that petitioner was never terminated and he had worked in department *w.e.f.* 1994 to 2008 with intermittently as he left the work at his own will.

12. RW1 Shri Devinder Singh Dhadwal has alleged that petitioner is working with department on seasonal basis. He expressed his ignorance as to whether there is any notification of government whereby the work of forest department has been declared to be seasonal in nature. Petitioner has denied that his work was seasonal in nature.

13. The petitioner has alleged that workers junior to him were retained and also regularized after completion of statutory period but he was intentionally deprived of the requisite number of mandays by the respondent. Seniority list Ext. RW1/D has been produced on record which admittedly does no mention the date of engagement or appointment of workers listed therein. Only the order of engagements been mentioned. Respondent has failed to provide the complete record of date of engagement of workers mentioned in seniority list Ext. RW1/D. RW1 Shri Devinder Singh Dadhwal has admitted that the said record was available with the department. The intentional concealment of date of appointment/engagement of workers in this list Ext. RW1/D lead this court to draw an adverse inference against the respondent department.

14. The work of petitioner is time and again alleged to be seasonal but RW1 Devinder Singh Dadhwal admits that workers mentioned in list Ext. RW1/D were also engaged on seasonal basis as per availability of work and funds. It is clear that Dhian Chand, Ramesh and Man Singh whose named find mention in the list Ext. RW1/D were engaged after the petitioner, they were provided complete mandays despite the alleged seasonal nature of work and subsequently eligible for service benefits. These persons were admittedly and evidently junior to the petitioner. Per contra the number of mandays provided to the petitioner for same nature of work during the same time period was comparatively less. RW1 Devinder Singh Dadhwal admits that they had not given any notice to the petitioner regarding abandonment directing him to join his duties. There is no evidence to show that petitioner has wilfully failed to work for the requisite months. There appears to be discriminatory attitude on the part of the respondent towards the petitioner when compared with that of the workers who were engaged after the date of engagement of the petitioner with the department. The above mentioned persons were provided work while the petitioner was intentionally deprived. The Hon'ble High Court of H.P. in **State of H.P. & Anr. Vs. Ramesh Kumar in CWP No.7613 of 2014** has observed in paras No. 8,9,10 and 11 held as under:—

> "8. The workman tendered in affidavit, Ex. PW-1/A, wherein he reiterated the contents of the reference petition. In his cross-examination he has admitted that his services were engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar and later on, in November, 2004, being surplus, he was transferred to HPPWD (D&R) Division, Baijnath. The workman denied that he used to work as per his convenience and no fictional breaks were given to him
>
> 9. Both workman and the employer acknowledge that the workman was engaged as a daily waged beldar on 01.05.1999 and he continued as such upto September, 2007. As per the workman, he was terminated in September, 2007, whereas as per the employer, the workman was an intermittent worker and he used to work as per his convenience. Shri J.S. Guleria, Executive Engineer,HPPWD (B&R) Division Baijnath (respondent) testified as RW-1. He corroborated the contents of the reply. In his cross-examination he has deposed that no notice *qua* willful absence from duty was ever served upon the workman. <u>In the given facts and circumstances, when no notice was ever served upon the workman by the employer calling him to resume his duties, abandonment of service cannot be attributed to the workman. Moreover, nothing is emanating from the</u>

record that proceedings were ever initiated against the workman for willful absence or otherwise. Thus, the plea that the workman was an intermittent worker, who used to work as per his convenience goes unestablished.

10. Mandays chart (Annexure P-II), portrays that the workman did not complete 240 days in a calendar year preceding the date of his termination, *i.e.* September, 2007, as mandated by Section 25-B of the Act. Therefore, the provisions of Section 25-B are not attracted. Mandays chart of Shri Harbans Lal and others reveal that persons junior to the workman were provided work for 240 days or more by the respondent/employer in a block of 12 calendar months. The said conduct of the employer discriminatory and does not stand in the eyes of law. Thus, after perusal of the mandays charts of the workman and other workers, it clearly and unambiguously stands established that there had been violation of the provisions of Sections 25-G and 25-H of the Act, rendering the termination of the workman illegal. It is not at all obligatory for a workman to complete 240 days in a calendar year preceding his termination to take benefits of the provisions of Sections 25-G and 25-H of the Act. In the present case, the breaks given to the respondent/workman were fictional breaks, which were given deliberately in order to make the petitioner not to complete 240 days in a calendar year. These breaks cannot be considered as actual breaks. The petitioners have failed to demonstrate that when the respondent did not turn up for work, whether any notice was served to him, and they have also failed to prove that no work was available during those periods when the workman was not allowed to work. In view of the above facts, an adverse inference is required to be drawn against the petitioners and this Court finds that the breaks given to the petitioners were fictional breaks, which were not within the control of the respondent/workman. Therefore, this Court finds no infirmity with the well reasoned judgment of the learned Trial Court.

11. In Uptron India Ltd. *Vs.* Shammi Bhan and another, (1998) 6 Supreme Court Cases 538, the Hon'ble Apex Court has held that the employer cannot terminate the services of the workman until and unless principles of natural justice have been followed and the workman has been provided reasonable opportunity to explain himself before terminating his services on the basis of abandonment of job.

15. Consequent to the above discussion the logical conclusion is that the termination of the services of petitioner by the respondent from time to time from the year 1994 to 2008 and finally in July, 2008 was illegal and unjustified specially when workers junior to the petitioner were provided the maximum number of days and consequential benefits of the service. In the light of above discussions since the termination of the services of the petitioner is unjustified, the petitioner is also entitled for reinstatement, continuity in service and consequential benefits from July, 2008 onwards alongwith compensation to the sum of Rs. 50,000/- with interest. Issue No.2 is accordingly decided in the favour of petitioner.

*Issues No. 1 and 4*

16. The reference made before this court clearly mentioned and requires adjudication as to whether the demand notice dated 11.4.2012 suffered from the vice of delay and laches. The Hon'ble Supreme Court in **Prabhakar vs. Joint Director, Sericulture Department and another, AIR 2016 SC 2984.** It has held in paras no.26, 27 and 42 as follows:-

"26) The aforesaid case law depicts the following:

(a) Law of limitation does not apply to the proceedings under the Industrial Disputes Act, 1947.

(b) The words 'at any time' used in Section 10 would support that there is no period of limitation in making an order of reference.

(c) At the same time, the appropriate Government has to keep in mind as to whether the dispute is still existing or live dispute and has not become a stale claim and if that is so, the reference can be refused.

(d) Whether dispute is alive or it has become stale/non-existent at the time when the workman approaches the appropriate Government is an aspect which would depend upon the facts and circumstances of each case and there cannot be any hard and fast rule regarding the time for making the order of reference.

27) If one examines the judgments in the aforesaid perspective, it would be easy to reconcile all the judgments. At the same time, in some cases the Court did not hold the reference to be bad in law and the delay on the part of the workman in raising the dispute became the cause for moulding the relief only. On the other hand, in some other decisions, this Court specifically held that if the matter raised is belated or stale that would be a relevant consideration on which the reference should be refused. Which parameters are to be kept in mind while taking one or the other approach needs to be discussed with some elaboration, which would include discussion on certain aspects that would be kept in mind by the courts for taking a particular view. We, thus, intend to embark on the said discussion keeping in mind the central aspect which should be the forefront, namely, whether the dispute existed at the time when the appropriate Government had to decide whether to make a reference or not or the Labour Court/ Industrial Tribunal to decide the same issue coming before it.

42) To summarise, although there is no limitation prescribed under the Act, for making a reference under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry.

17. In the present case as per the pleadings initially the services of the petitioner were terminated by the respondent in the year 2002 and on approaching the Hon'ble Administrative Tribunal the services of the petitioner were ordered to be reinstated from October, 2003. This speaks about the previous conduct of the respondent with regard to the services of the petitioner. Subsequently till 2008 petitioner was again not put on a continuous work and finally his services were terminated in the year 2008. The requisite mandays chart is on record which also shows the intentional fictional breaks in the services of the petitioner when compared with the services of his counter parts. The demand notice was raised by the petitioner within four years of final termination of his services and it cannot be held to be unduly delayed as petitioner has raised the dispute of similar nature way back in the year 2003. The workers junior to the petitioner were regularized in the year 2008 and his demand notice is dated 11.4.2012. The time lapse between the termination of the petitioner and demand notice is not such that dispute can be held to have been extinguished. It is established that provisions of Section 137 of Limitation Act, 1963 are not applicable to the Industrial Disputes Act, 1947. Accordingly issues no.1 and 4 are decided in the favour of the petitioner.

18. The maintainability of the claim petition was specifically challenged on behalf of the respondent on the ground that petitioner himself had abandoned the work from time to time. No evidence in this regard could be produced by the respondent neither this fact emerged from the bulk of oral and documentary evidence produced before this court. Hon'ble High Court of Delhi in **Filmistan Exhibitors Ltd. Vs. N.C.T. Thr. Secy. Labour & Ors, 2007 (2) SLJ 258 (DEL)** has held in para no.16 as follows:

> "16. It is settled law that irrespective of the onus of proof, a party in possession of the best evidence is bound to place the same before the Court. In the instant case, the workman had challenged the case set up by the petitioner and had also clearly objected to its failure to produce the relevant records which were admittedly in its power and possession. The petitioner failed to produce the same and as such an adverse inference in terms of **Section 114 Illustratioin (g) of the Indian Evidence Act, 1872** and was liable to be drawn against it. In this behalf, I may appropriately refer to the pronounce of the Apex Court **AIR 1968 SC 1413** entitled Gopal Krishnaji Ketkar *v*. Mohamed Haji Latif & Others Latif".

18. Hon'ble High Court of H.P. in **State of H.P. vs. Prakash Chand** has held in para no.16 as follows:—

> "16. It is settled law that mere plea of abandonment, if any, taken by the employer may not be sufficient to prove that workman abandoned the job, rather it is incumbent upon the employer to place on record substantial evidence to prove that specific notice was issued to the workman before alleged abandonment advising/asking workman to join duty within stipulated period. In this regard, reliance is placed upon the judgment passed by Bombay High Court in case titled Ocean Creations *Vs*. Manohar Gangaram Kamble 2013 SCC Online ::: It is profitable to reproduce paras No.8,9 and 10 of the judgment herein:—
>
> "8. The legal position is also settled that 'abandonment or relinquishment of service' is always a question of intention and normally such intention cannot be attributed to an employee without adequate evidence in that behalf. This is a question of fact which is to be determined in the light of surrounding circumstances of each case. It is well settled that even in case of abandonment of service, unless the service conditions make special provisions to the contrary, employer has to give notice to the workman calling upon him to resume duties and where he fails to resume duties, to hold an enquiry before terminating services on such ground.
>
> 9. In somewhat similar circumstances a Division Bench of this court comprising P.B.Sawant, J. (as he then was) and V.V.Vaze, J. in the case of Gaurishanker Vishwakarma *v.* Engle Spring Industries Pvt. Lted. Observed thus: ".....it is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case the employer has done neither. It was for the employer to prove that the workman had abandoned the service.....
>
> It is therefore difficult to believe that the workman who had worked continuously for six to seven years, would abandon his service for no rhyme or reason. It has also to be remembered that it was the workman who had approached the Government Labour Officer with a specific grievance that he was not allowed to join his duty. It was also his grievance that although he had approached the company for work from time to

time, and the company's partner Anand had kept on promising him that he would be taken in service, he was not given work and hence he was forced to approach the Government Labour Officer. In the circumstances, it is difficult to believe that he would refuse the offer of work when it was given to him before the Labour Officer…."

10. Again a learned Single Judge of this court R.M.Lodha, J( as he then was) in the case of Mahamadsha Ganishah Patel v. Mastanbaug Consumers' Co-op. Wholesale & Retail Stores Ltd. Observed thus:—

"….The legal position is almost settled that even in the case of abandonment of service, the employer has to give notice to the employee calling upon him to resume his duty. If the employee does not turn up despite such notice, the employer should hold inquiry on that ground and then pass appropriate order of termination. At the time when employment is scarce, ordinarily abandonment of service by employee cannot be presumed. Moreover, abandonment of service is always a matter of intention and such intention in the absence of supportable evidence cannot be attributed to the employee. It goes without saying that whether the employee has abandoned the service or not is always a question of fact which has to be adjudicated on the basis of evidence and attending circumstances. In the present case employer has miserably failed to discharge the burden by leading evidence that employee abandoned service. The Labour Court has considered this aspect, and, in my view rightly reached the conclusion that the employer has failed to establish any abandonment of service and it was a clear case of termination. The termination being illegal, the Labour Court did not commit any error in holding the act of employer as unfair labour practice under Item-I, Schedule IV of the MRTU & PULP Act….."

19. Hence claim petition is maintainable and issue no. 3 is decided in the favour of the petitioner.

*Relief*

20. In view of my discussion on the issues no. 1 to 4 the claim petition succeeds and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. He is also held entitled for seniority and continuity in service from the date of his illegal termination alongwith compensation to the tune of Rs. 50,000/- alongwith interest @ 6% from date of illegal termination in year 2008 till realization. Parties are left to bear their costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-**CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. :612/2015

Date of Institution : 19.12.2015

Date of Decision : 31.7.2024

Shri Sunil Kumar s/o Shri Pradhan Chand, r/o Village Salig, P.O. Tang, Tehsil Dharamshala, District Kangra, H.P. . . *Petitioner*.

*Versus*

(i) The General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhyogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Principal Employer)

(ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh C/O Ward No.-5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor)

(iii) The General Manager, M/s Lanco Infratech Limited, Plot No.-4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. . . *Respondents*.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Tarun Sharma, Ld. Adv.

For Respondent(s) : Sh. K.K. Chaudhary, Ld. Adv.

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner.

> "Whether termination of services of Shri Sunil Kumar s/o Shri Pradhan Chand, r/o Village Salig, P.O. Tang, Tehsil Dharamshala, District Kangra, H.P. *w.e.f.* 17-05-2012 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd. Plot No.229, Phase-I, Udhyogvihar, Gurgaon, Haryana C/o B D Sharma Niwas, Shyamnangar, Dharamshala, H.P. (Principal Employer) (ii)Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainkpur, Secunderabad, Andhra Pradesh c/o Ward No.-5 Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor), (iii) the General Manager, M/S Lanco Infratech Limited, Plot No. 4, Software Unit, Lay Out HITECH, City Madhapur, Hydrabad, Andhra Pradesh, c/o Shri B. D. Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After receipt of the above reference a corrigendum reference dated 30th May, 2019 has been received by this court for adjudication from the appropriate Government/Joint Labour Commissioner which reads as follow:—

> "However inadvertently the correct facts could not be mentioned about the date of termination of the workman in the said notification. Therefore, the date of termination of the workman may be read as "15-05-2010" instead of "17-05-2012" as alleged by workman".

3. The brief facts as stated in the claim petition are that M/s Lanco Infratech Ltd., Plot no. 229, Phae-I, Udyog Vihar, Gurgaon, Haryana c/o B.D. Sharma Niwas, Shyam Nagar, Tehsil and Post Office Dharamshala, District Kangra, H.P. was associated by the following companies which were awarded the powers work by the H.P. Government as follows:—

(i) Local Address:- M/s Vamshi Hydro Energies Pvt. Ltd., Iku Hydro Power Project Village Salag, Post Office Tang Narwana, Tehsil Dharamshala, District Kangra, H.P.

Permanent Address:-M/s Vamshi Hydro Energies Pvt. Ltd. UGF Antriksh Bhawan, 22 KG Marg, New Delhi, Pin-110001.

(ii) Local Address:- M/s Vamshi Hydro Energies Pvt. Ltd. Bane Hydro Project 3 HPSEB/INTAKE Village and Post Office Jia, Tehsil Palampur, District Kangra, H.P.

Permanent Address:- M/s Vamshi Hydro Energies Pvt. Ltd. UGF Antriksh Bhawan, 22 KG Marg, New Delhi, Pin -110001

(iii) Local Address: M/s Vamshi Hydro Energies Pvt. Ltd. Darini Dhar Hydro Power Project Village Bhiyora, Post Office Darm Nala, Tehsil Shahpur, District Kangra, H.P. Permanent Address.—M/s Vamshi Hydro Energies Pvt. Ltd. UGF Antriksh Bhawan, 22 KG Marg, New Delhi, Pin-110001.

(iv) Local Address.—M/s Vamshi Hydro Energies Pvt. Ltd. Sali Power Project Village and Post Office Sali, Tehsil Shahpur, District Kangra, H.P.

Permanent Address.—M/s Vamshi Hydro Energies Pvt. Ltd. UGF Antriksh Bhawan, 22 KG Marg, New Delhi, Pin-110001.

4. It is submitted that management of work awardee was the same and thereby management was common. Consequent to the award of project work and induction of M/s Lanco Infratech for execution the workers initially engaged by management awardee of work was transferred to M/s Lancto Infratech. According to petitioner the workers after their engagement started insisting upon their management to issue appointment letters and thus feeling agitated over the petitioner's demand the management interpolated labour contract or on 1.5.2007 with an address Managing Director-*cum*-Chairman, Sun Security Services, 205, Road no 6A Second Cross Road, Vayupuri Near Vayupuri Bus Stop, Sanikpuri (Post) Secunderabad, Andhra Pradesh, Branch Office Capt. Ramesh Chand, Ward No.5, Vinay Gali, Post Office and Tehsil Nurpur, District Kangra, H.P. It is alleged that on 16.5.2010 petitioner was retrenched by respondent no.2 and being aggrieved through his union made a complaint dated 17.7.2010 to respondent nos. 1 to 3 and Labour Inspector-*cum*-Conciliation Officer Palampur, District Kangra, H.P. A complaint was made to respondent nos. 1 to 3 and copy to Labour Inspector-*cum*-Conciliation Officer did not initiate any action on the complaint and again complaint was made with the Labour Inspector-*cum*-Conciliation Officer, Palampur. The Labour Inspector sent the same to the Labour Commissioner, Shimla. The Labour Commissioner, Govt. of H.P. had directed Labour Officer, Dharamshala, District Kangra, H.P. to have individual worker wise demand notice under Section 2-A of the Industrial Disputes Act containing inter alia their actual date of engagement and termination and send separate reports. On 21.9.2012 the separate demand notice was sent to respondent and Labour Officer Dharamshala and Labour Inspector Palampur by the petitioner for illegal retrenchment for his services.

5. It is alleged that on 1.12.2005 the petitioner was appointed as driver by respondent no.3 and his attendance was marked in a register maintained by respondent no. 3's official till 15.5.2010. On 16.5.2010 the petitioner was illegally retrenched by respondent no. 2 even though he was not the employee of respondent no. 2. No retrenchment notice had been served upon the petitioner. It is further submitted that respondent no. 3 on 1.5.2007 entered into a contract with the respondent no. 2 showed the petitioner as their employee from 1st February, 2010. Actually the petitioner was working with the respondent no. 3 since 29.7.2007. It is alleged that respondent nos.

2 and 3 did not take the consent of the petitioner when they entered into contract with respondent no.1 which is against the provisions of the Act and ratio laid down in the following cases:—

(i) Pyar Chand Kasarimal Parwal, Bidi Factory *vs.* Onkar Laxman Thenge, 1970 FLR 140 (SC)

(ii) Jawahar Lal Nehru University *vs.* Dr. K.S. Jawartkar, 1990 (1) LLN310.

6. When the petitioner came to know about the change of his employer he (petitioner) through union vide letter dated 25.9.2008 raised demand to the respondent as how the employer was changed without their consent and will. Respondent no. 3 entered into a written compromise with the union on 16.2.2009 as per settlement at serial no.1, wherein 28 employees taken, will be adjusted into Baner III according to their ability and interest including the petitioner but the respondent totally violated the settlement registered on 19.2.2009 with the conciliation-*cum*-Labour Inspector, Palampur. Letter dated 7.6.2010 was issued by respondent no. 2 to the petitioner which shows that the petitioner was transferred from respondent no.3 to respondent no. 2. It is further alleged that respondent no.2 in order to satisfy the illegal designs got a blank appointment form from the petitioner and other workers. Thus there was falsification of service record maintained by the respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory to the record even the compensation and other benefits given though received under protest were not accurately computed as per Section 25-F of the Industrial Disputes Act. It is alleged that respondent no.3 has not obtained any permission from the government for termination of and other workers as provided under Section 25-N of the Industrial Disputes Act. Even though the petitioner was not employee of respondent no. 2 yet the services of the petitioner were terminated by respondent no. 2 which is illegal and unlawful and against the provisions of the Industrial Disputes Act. It is alleged that there was flagrant violation of Section 25-N of the Act as no permission obtained by the respondent from the Government. It is further alleged that they did not prepare any seniority list of petitioner and other workers at the time of his retrenchment thus junior employees to the petitioner had still working with the original employer. In the light of these allegations petitioner has prayed that the transfer of petitioner and other workers to labour contractor without their consent may be wrong and illegal. The retrenchment of petitioner and other workers may be also held illegal void being contrary to the provisions of Section 25-F and 25-N of the Industrial Disputes Act. It is prayed that retention of junior workers on the roll of management of work awardees companies M/s Vamshi Hydro Energies Pvt. Ltd. And M/s Vamshi Industrial Power Ltd. may also be declared to be in violation of the provisions of law.

7. In reply on behalf of the respondents no. 1 to 3 preliminary objections *qua* petition being bad due to conduct and acquiescence of the petitioner, suppression of material facts and petition being bad for mis-joinder and non-joinder of necessary party etc. have been raised. On merits it is asserted that the State of H.P. has allotted the Baner Hydro Project-3 to M/s Vamshi Hydro Energies Pvt. Ltd. UGF, Antriksh Bhawan 22 KG Marg, New Delhi-110001 and same project was leased out by the government of H.P. to M/s Vamshi Hydro Energies Pvt. Ltd. for a period of 40 years. After obtained the Baner Hydro Project the respondent no.1 assigned the construction work of the project to M/s Lanco Infratech Ltd on contract. The construction company had invited tenders from various companies for supply of construction material and supply of labour etc. Accordingly Sun Security Services, head office at B-11, First Avenue Sanikpuri Sikandra Bad contracted the respondent no. 3 for supply labour. After due negotiation contract of Sun Security Services *vide* Ref. No. LITH/WO/346/2007 on 30.4.2007. The Sun Security Services engaged the services of the petitioner Sunil Kumar on 1.6.2007 as unskilled labourer on payment of daily wages. The document Annexure-A1 produced by the petitioner is alleged to be false document. It is asserted that petitioner was not engaged by the respondent no.1 Vimashi Hydro Energies Pvt. Ltd. on 1.5.2007. According to respondents the exhibit R-1 is the work register of the

workmen, application for recruitment of the petitioner exhibit R-2, exhibit R-3 is the full and final settlement payment receipt which is one month advance salary for retrenchment because respondent no.2 not having work on the site. It is asserted that respondent no.2 disengaged the unskilled labourer as the project was having no need such worker and consequently the petitioner received the entire payment from Sun Security Services by way of annexure R-1. It is also asserted that the respondent no.2 was ready to engage the petitioner in other projects. Other averments made in the petition were denied as wrong and false. It is prayed that the petitioner was not entitled for any relief as prayed.

8. In rejoinder preliminary objections were denied and facts already mentioned in the petition were reasserted and reaffirmed.

9. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of the petitioner by the respondents *w.e.f.* 17-05-2012 is/was improper and unjustified as alleged? *OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? . . *OPP*.

3. Whether the petition is not maintainable in the present form, as alleged? . . *OPR*.

4. Whether the claim petition is barred by his act and conduct as alleged? . . *OPR*.

5. Whether the petitioner has not come to the Court with clean hands as alleged? . . *OPR*.

6. Whether the petitioner has concealed the material facts from the Court as alleged? . . *OPR*.

7. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . . *OPR*.

Relief.

10. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has deposed on oath the facts mentioned in the claim petition. He also proved on record letter Mark-A, letter dated 30.4.2007 Ext. PW1/B, letter dated 7.3.2012 Ext. PW1/C, copy of compromise dated 16.2.2009 Ext. PW1/D, letter dated 7.6.2010 Ext. PW1/E, copies of certificates of registration dated 23.6.2006 Ext. RW1/F and Ext. PW1/G and copy of demand notice dated 21.9.2012 Ext. PW1/H.

11. Respondents have examined Shri Ramesh Chand s/o Late Shri Dhani Ram, Branch Manager of Sun Security Services. He has stated on oath that a contract for supply of labour was awarded to their company by Lanco Infratech Ltd. on the basis of this contract petitioner was engaged as a driver, muster roll with respect to work done by the petitioner is Ext. R-4 and R-3. On the completion of the project work respondent no.3 had cancelled the contract order and issued notice dated 25.4.2010 Ext. R-5 and Ext. R-6. Consequently notice dated 15.5.2010 Ext. R-7 was issued to the petitioner and who was disengaged from his services. He also stated that they had given one month pay to the petitioner by way of cheque Ext. R-1 which was duly received by the petitioner.

12. I have heard the learned counsel for the parties at length and records perused.

13. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Yes

Issue No. 6 : Yes

Issue No. 7 : Yes

Relief. : Claim petition is dismissed per operative portion of the Award.

**REASONS FOR FINDINGS**

*Issue No.1 & 2*

14. Both these issues shall be taken up together for the purpose of adjudication.

15. Petitioner Sunil Kumar has presented his claim petition on the grounds that he (petitioner) alongwith other workers was actually employed by the respondent no. 3 *i.e*. M/s Lanco Infratech Ltd. He also alleged that thereafter respondent no.3 entered into contract with the respondent no. 2 and after the interpolation of respondent no.2 the petitioner alongwith other workers was shows as the employee of respondent no. 2 from 1.4.2010. According to the petitioner they were actually working with respondent no. 3 since 6.12.2005. Petitioner has alleged that respondent nos. 2 and 3 did not obtain the consent of the petitioner when they entered into contract with respondent no.1 which is also against the provisions of the Act. When the petitioner came to know about the aforesaid contractorship of change of his employer the petitioner through union *vide* letter dated 25.9.2008 made a demand notice to the respondent as to how their employer has been changed without their consent and will. It is alleged that on this respondent no.3 entered into written compromise with the union on 16.2.2009 wherein it was agreed that 28 employees will be adjusted in the Baner-III according to their ability and interest. The petitioner was assured with letter dated 7.6.2010 issued by respondent no.2 to the petitioner which clearly shows that the petitioner was transferred from respondent no.3 to respondent no.2. Respondents on the other hand have denied that the petitioner was an employee of respondent no.3. In-fact according to respondents the petitioner was engaged as an employee by respondent no.2 who had entered into a contract with respondent no.3 to supply labour for the project work. Document Annexure A-1 also mark A has been produced in the statement of the petitioner. The document shows that the petitioner was initially employed by the company along with other labourers on 1.12.2005 company *i.e.* Lanco Infratech Ltd. This document also shows that there was transferred of the workers to the labour contractor on 1.2.2010. It is pertinent to mention that the document has not been proved in accordance with law. This document when read with Ext. PW1/E clearly shows that petitioner worked with respondent no. 3 till 31.1.2010. The petitioner in his cross-examination

has admitted that he could not produce any appointment letter issued by Vamshi Hydro Energies Pvt. Ltd.. He has also admitted that he could not produce any appointment letter on the post of driver on 1.12.2005. Another document which has been asserted which has been exercised on behalf of the petitioner however clear reading of this document also shows that it is work order issued by M/s Lanco Infratech Ltd. for providing manpower to M/s Sun Security Services. Ext. PW1/E, Mark-A alongwith the agreement Ext. PW1/D does not prove that the petitioner was initially the employee of Lanco Infratech Ltd. and thereafter interpolated as an employee or worker respondent no.3 M/s Sun Security Services. The document *i.e.* agreement Ext. PW1/D mentions the name of various workers however name of Sunil Kumar s/o Pradhan Chand *i.e.* petitioner does not find mention in this document but the same is relied upon by the petitioner. Respondents witness RW1 Ramesh Chand has clearly stated in his deposition that their company was given contract for supply labour by Lanco Infratech Ltd. He also stated that the petitioner was working as driver and the muster roll with respect to the petitioner Ext. R-4 and R-3 is also clarified that since the respondent no. 2 work order was cancelled by Lanco Infratech Ltd. and the work of project was over the workers were disengaged after the payment of one month's salary. He has produced on record Cheque R-1 dated 31.10.2012.

16. The petitioner in his cross-examination has admitted that the work of the project was completed though according to him production of electricity was still going on. He has asserted that he was worked as driver. He was admitted that Sun Security Services had paid him Rs. 33750/- as full and final payment, though he has asserted that he was paid by the monthly salary due to him. He has also admitted that he could not produce any record of payment of his salary made by respondent no.3. He admitted that he put his signatures on receipt Ext. R-2 which was given on 31.10.2012. Though he denied that he received a sum of Rs. 33750/- by way of draft Ext. R-1 as one month's advance salary in lieu of notice however there is no explanation given on the part of the petitioner regarding receipt of the above amount from the respondent no. 2.

17. The contention of the petitioner that he was employed by respondent no. 3 is not proved from oral and documentary evidence *i.e.* Mark-A, Ext. PW1/B, Ext. PW1/D produced before the court. Similarly it appears from the cross-examination of the petitioner as well as the documents with one month's advance salary had been paid to the petitioner on completion of the work of project in accordance with the provisions of the Act. No evidence could be produced by petitioner in order to prove that any of the co-workers employed along with him have been retained by the respondents. On the contrary it is submitted by respondent no.2 that on completion of project work they had offered the petitioner to work at other places where the company was operating but the offer was declined by the petitioner. There is nothing in the cross-examination of respondent RW1 Shri Ramesh Chand to controvert these averments made in the pleadings of the respondents. No doubt after 31.1.2010 there was change in condition of service of petitioner but same was pursuant to agreement Ext. PW1/D. Section 9-A of the Industrial Disputes Act, 1947 reads as follow:—

**"9A. Notice of change.**

-No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change-(a)where the change is effected in pursuance of any [settlement or award] *[ Substituted by Act 46 of 1982, Section 6, for certain words (w.e.f. 21.8.1984).]*; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

18. The change in service condition was in pursuance to a settlement duly registered with Labour Inspector, Palampur. In view of the above evidence the termination of the services of petitioner by the respondents *w.e.f.* 17.5.2012 cannot be held improper and unjustified and in violation of the provisions of the Industrial Disputes Act. Accordingly, petitioner is not entitled to any service benefits as prayed. Issues no.1 and 2 are decided in the favour of respondents.

*Issue No. 3*

19. The maintainability of the petition was merely on the ground that the services of the petitioner have been disengaged after payment of one month's advance salary in lieu of notice and there was no violation of the provisions of the Industrial Disputes Act, 1947. These facts have been proved by the documentary and oral evidence led by the respondents, hence the petition is not maintainable.

*Issues No.4 to 6*

20. The petitioner is admitted in his cross-examination having received one month's advance salary of Rs. 37550/-. The receipt as well as the draft Ext. R-1 have been duly proved on the case file and it is also admitted by the petitioner that work of the project was completed. In these facts and circumstances the petitioner is barred by his act and conduct from filing the present petition and it is clear that he had approached the court by concealing the material facts. Accordingly issues no. 4, 5 and 6 are decided in the favour of the respondents.

*Issue No.7*

21. Claim is alleged to be bad on account of non impleadment of necessary party. The evidence merely established the relationship of petitioner with respondent no. 2 and there does not appear to be change in any condition of the services of the petitioner requiring the impleadment of any other necessary party in this case. Accordingly this issue is decided in the favour of respondents.

*Relief*

22. In view of my discussion on the issues no. 1 to 7, the termination of the services of the petitioner by the respondents 15.5.2010 cannot be considered as improper and unjustified. Accordingly claim petition is not maintainable, hence the same is dismissed and petitioner cannot be held entitled to any relief as claimed by him. Parties are left to bear their costs.

23. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 103/2019

Date of Institution : 29.10.2018

Date of Decision : 31.7.2024

Shri Sunil Kumar s/o Shri Roshan Lal, r/o Village Abdulapur, P.O. Jamanabad, Tehsil and District Kangra, H.P. . . *Petitioner*.

*Versus*

M/s Divya Himachal Prakashan Pvt. Ltd., through its CMD, Head Office at Kangra-Pathankot Marg, Old Mataur, Tehsil & District Kangra, H.P. . . *Respondent*.

....*Respondent*.

**Application under Section 2A of the Industrial Disputes Act, 1947 read with Special Provisions of Section 16-A of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 filed on behalf of workman/claimant above named.**

For the Petitioner : Sh. Ravinder Aggarwal, Ld. AR

For Respondent : Sh. N.L. Kaundal, Ld. AR and

Sh. Vijay Kaundal, Ld. Adv.

**AWARD**

This is an application/claim under Section 2A of the Industrial Disputes Act, 1947 read with Special provisions of Section 16-A of the Working Journalists and other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955 on behalf of workman/claimant. Pursuant to the separate order on an application granting permission to file direct claim petition and be registered as a reference made by my learned predecessor *vide* order dated 17.9.2019.

2. The brief facts of the claim are that the applicant/claimant was employed with the management M/s Divya Himachal Prakashan Private Limited having its registered office/head

office situated at Pathankot-Kangra Marg, Old Mataur, Tehsil and District Kangra, H.P. as a Mali from July, 2011 in Admin. Department without any appointment leter. It is further submitted that the services of the claimant were confirmed *w.e.f.* 1.11.2011 and salary slip of February, 2012 has been produced on record. It is further submitted that the applicant/claimant had been working with the management under supervision and control of the officials of the management of the company at its head office. Since his appointment in the service the applicant/workman continued to work of the management and had un-blemished service record of approximately seven years. The wages and service conditions of the applicant/workman are governed by the Governing Act, enacted by the Parliament and the management/respondent is covered under the Governing Act. More than 100 workmen are regularly employed with the said newspaper establishment in the preceding year of the filing of the claim and the post of the applicant/claimant as Mali is also governed under Section 2(c) and 2(dd) of the Governing Act as a non-journalists employees of the newspaper establishment. 3. It is submitted that in terms of Governing Act the applicant was entitled to the wage as recommended by Wage Board instituted by the Government of India, Ministry of Labour and Employment. The recommendations of Majithia Wage Board were accepted by the union Government *vide* its Notification dated 11.11.2011. The Hon'ble Supreme Court delivered the judgment reported as ABP Pvt. Ltd. & Anr. *Vs.* Union of India & Ors, AIR 2014 SC 1228 dismissing all the writ petitions filed against the wage board and its award. The Hon'ble Apex Court has further directed all the newspaper establishments covered by the award of the wage board to implement the same and pay the arrears in four instalments to its employee within one year from date of its judgment. It is alleged that the management of respondent did not implement the recommendations of wage board as confirmed by the Hon'ble Supreme Apex Court in terms of provisions of Section 13 of the governing Act. the wages paid to the newspaper employees could not be less than the recommendations of the wage board as accepted by the Government. Being aggrieved by non implementation of Majithia Wage Board recommendations the employees of various newspaper establishments of all over India had filed contempt petitions before the Hon'ble Supreme Court. Thereafter Hon'ble Supreme Court *vide* its judgment dated 19.6.2017 has held that the managements have one more opportunity to implement the recommendations of Majithia Wage Board. The applicant/workman had submitted an application for recovery in terms of Section 17 of the Governing Act before the Principal Secretary (Labour & Employment) of the Government of Himachal Pradesh and designated authority under Section 17 of the Governing Act alongwith Form –C on 23.4.2018. After receipt of the notice issued by the designated authority to the management on 3.5.2018 on the application of recovery the management had barred the entry of the claimant/workman in its newspaper establishment and pressurized/forced the claimant/workman to withdraw the application of recovery. When the applicant had denied withdrawing the application for recovery he was verbally terminated from service *w.e.f.* 15.5.2018. Being aggrieved by this action of the management/respondent the claimant/workman had filed an application before designated authority *i.e.* Labour-*cum*-Conciliation Officer, Dharamshala for the violation of Section 16-A of the Governing Act and also provisions of Section 33 of the Industrial Disputes Act, 1947 on 17.5.2018. On the directions of Labour-*cum*-Conciliation Officer, he (applicant/workman) had also submitted amended application in terms of Section 2-A of the Industrial Disputes Act, 1947 read with Section 16-A of Governing Act and other provisions of the Acts on 15.7.2018. In the present application/claim the workman prays that more than 45 days expired from the date of filing of the amended application of illegal termination of his services before the designated authority, hence the workman had preferred the present application directly before this court. The claimant/applicant has prayed that his illegal and unjust verbal order of termination of his services may be set aside and he may be reinstated in service with full back wages as per recommendations of Majithia Wage Board and other consequential benefits.

4. In reply to the claim preliminary objections qua maintainability of the claim directly before this court, jurisdiction, denial of employer employee relationship, application being abuse process of law etc have been raised. On merits, it has asserted that the averments made in the

application are wrong and not admitted. In-fact the services of the claimant/workman were engaged by the Managing Director of the company for his residence for personal domestic work. The management of the company has denied that it has no role in the engagement of the claimant who was working with the Managing Director at his residence. It has asserted that the claimant was merely a personal servant hired by Managing Director who was paid honorarium out of his own pocket. In the light of this application it is asserted that there does not exist employer and employee relationship between the respondent and the claimant. It is further asserted that the claimant is not employee/workman within the definition of Section 2(dd) of the Governing Act. Neither he falls within the definition of workman under Section 2(s) of the Industrial Disputes Act. It was further submitted that the claimant raised present application by dragging M/s Divya Himachal Prakashan Pvt. Ltd. falsely and he left the services at his own will from the respondent M/s Divya Himachal Prakashan Pvt. Ltd. In these circumstances there was no requirement of serving any show cause notice to the applicant being the domestic servant of the Managing Director of the company.

5. By way of rejoinder the claimant has denied the preliminary objections and reasserted the facts in claim raised by him. In his application, it is prayed that the claim may be allowed and he may be reinstated alongwith statutory benefits and back wages.

6. On the basis of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.10.2019:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 15-05-2018 is/was illegal and unjustified, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the claim petition is not maintainable, as alleged? . . *OPR*.

4 Whether this Court has no jurisdiction to try the present petition, as alleged? . . *OPR*.

5. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged? . . *OPR*.

6. Whether there exists no relationship of master and servant in between the petitioner and the respondent, as alleged? . . *OPR*.

7. Whether the petitioner is not a workman under Section 2(S) of the Industrial Disputes Act, 1947 and under Section 2 (dd) of the Working Journalist Act, 1955, as alleged? . . *OPR*.

Relief.

7. The petitioner in order to prove his case has examined Shri Sanjay Garg, Branch Manager, Kangra Co-operative Central Bank Jamanabad, Tehsil and District Kangra as PW1 who stated on oath that he was posted as Branch Manager, K.C.C. Bank Jamanabad since July, 2016. As per record brought by him the original document Ext. PW1/A was submitted by Sunil Kumar s/o Shri Roshan Lal, r/o Village Abdulapur, P.O. Jamanabad, Tehsil and District Kangra, H.P. He has admitted that the document Ext. PW1/A is wage slip of February, 2012. The loan was sanctioned on 10.4.2012 and he had recommended loan to the petitioner on the basis of Ext. PW1/A. PW2 Shri Prem Dass Kaundal has stated on oath in his affidavit Ext. PW2/A he has worked in head office of M/s Divya Himachal Prakashan Pvt. Ltd. as security guard *w.e.f.*

26.3.2012 to 24.10.2015. He was deputed by the management at main entrance/exit gate of the establishment to maintain day to day record/registers of the entry and exit of the employees, visitors and vehicles etc. He has further stated that he knew Sunil Kumar being a workman in the same establishment and Sunil Kumar had worked under the Administration department of M/s Divya Himachal Prakashan Pvt. Ltd. in its head office, Old Mataur, Kangra in the post of mali/gardener. He further stated that during his duty on main gate he was always entered the time of the entry and exit of Sunil Kumar (Mali) in the list of employees Administration Department. He has produced document Mark-A. In his cross-examination, he has admitted that there are no signatures either by him or by the workmen on this document. He denied that the Mark-A does not belong to respondent.

8. PW3 is Shri Rahul Chaudhary stated on oath in his affidavit Ext. PW3/A that he worked in M/s Divya Himachal Prakashan Pvt. Ltd. as Senior Engineer in IT Department in its head office situated at Old Mataur, Kangra *w.e.f.* 10.3.2011 till the date of his illegal termination on 4.8.2012. He has also stated that he knew Sunil Kumar being a workman in the same establishment and Sunil Kumar was worked under the Administration Department on the post of Mali. Sunil Kumar had appointed in the month of July, 2011. He further stated that being IT Engineer the backup of computerized data alongwith the record of the employees of the respondent/management was saved in his official computer and saved in external hard disk. As per his knowledge Sunil Kumar was in the role of the respondent's employee and his service history was recorded in computerized data. He further alleged that M/s Divya Himachal Prakashan Pvt. Ltd. and printing press registered as M/s Samarpan Printers had been forcibly extracting resignations of its employees on muster rolls and other employees working under the camouflage employment was also being verbally terminated. The same was done only to devoid the revised wages and due arrears in terms of Majithia Wage Board as upheld by Hon'ble Supreme Court. He has produced the documents Mark-B copy of computerized record. He admitted in his cross-examination that Mark-B does not carry his signature or any officer of the company. He has admitted that he is also litigation with the respondent. PW4 Shri Parshotam Chand has produced his affidavit Ext. PW4/A. He has stated that he worked with M/s Divya Himachal Prakashan Pvt. Ltd. as designer/page maker in its head office old Mataur Kangra *w.e.f.* 22.7.2011 till the date of his forced resignation on 4.8.2019. He has also stated that Sunil Kumar was workman of the same establishment working in the Administration department of M/s. Divya Himachal Prakashan Pvt. Ltd. having its head office at Old Mataur, Kangra in the post of Mali. He has also stated that Sunil Kumar was appointed in July, 2011. He deposed that the respondent had not followed the labour laws and was maintaining camouflage record of its employees and other benefits like provident fund, gratuity, bonus, medical insurance etc. Employees were being paid cash in hand separate camouflage record was maintained by the management in order to deceive labour authorities. His provident fund was also not deducted and his name was also not in the muster roll/attendant register. He has also alleged that the respondents have verbally terminated the services of its employees, extracted resignation of its employees in order to avoid revised wages of Majithia Wage Board recommendations. He has tendered documents in his evidence alongwith his affidavit his identity card Ext. PW1/B, bank statement Ext. PW1/C and list of workmen Ext. PW1/D. He admitted in his cross-examination he did not file any documentary evidence to show that the petitioner was working with him. The petitioner Sunil Kumar has reiterated the facts in his affidavit Ext. PW5/A and produced on record statement of Shri Anand Sharma Ext. PW5/B. He admitted in his cross-examination that he did not place on record any documentary material to show that he was engaged by the respondent since July, 2011 to 15.5.2018 though he has asserted that he has produced salary slip which was given to him once in his favour by the respondent.

9. The respondent in order to establish the case has examined Shri Hitesh Kotia, Manager (HR) of M/s Divya Himachal Prakashan Pvt. Ltd. District Kangra, H.P. who produced his affidavit Ext. RW1/A. In his affidavit he has reiterated the facts stated in the reply on behalf of the

respondents. In his cross-examination he has admitted that he is not well conversant of state of affairs prior to his joining in the company. He was engaged by the company in October, 2019.

10. I have heard the learned Counsel/AR for both the parties at length and records perused.

11. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Yes

Issue No.2 : decided accordingly

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Relief. : Petition is allowed per operative portion of the Award

**REASONS FOR FINDINGS**

*ISSUES No.1, 6 and 7*

12. All the issues are being interconnected with each other shall be taken up together for the purpose of determination and adjudication.

13. The petitioner claimed that he is a workman employed by the management of M/s Divya Himachal Prakashan, Pathankot-Kangra Marg, Old Mataur, Tehsil and District Kangra, H.P. *i.e.* respondent as Mali (Gardener) *w.e.f.* July, 2011 without any appointment letter. At the very outset the status of the petitioner as workman of respondent has been disputed by the respondent. In order to prove the employer and workman relationship, the petitioner PW5 Sunil Kumar has deposed on oath that he was employed by the management of respondent as Mali since July, 2011 and though confirmed on 1.11.2011. Neither any appointment letter nor any confirmation letter was issued to him. He has further produced on record a wage slip Ext. PW1/A issued by management of the respondent. This document is proved in statement of PW1 Sanjay Garg, Branch Manager, Kangra Co-operative Central Bank Jamanabad, Tehsil and District Kangra, H.P. The document was according to PW1 filed with the bank for obtaining loan by the petitioner. He admits that this wage slip for the month of February, 2012 on which loan of Rs.1 lakh was sanctioned to the petitioner. Learned counsel for the respondent has argued that the employment of petitioner as workman of respondent cannot be established merely on the basis of wage slip for one month *i.e.* February, 2012. Learned counsel for the respondent has however fairly conceded that wage slip Ext. PW1/A is not a disputed document one slip has been given by the management of company on the request of the petitioner to get loan from bank. It is the case of the respondent that the petitioner was neither the employee of respondent nor his services were terminated by the respondent. The relationship of master and servant between the petitioner and the respondent is specifically denied

and it is asserted that the petitioner was domestic servant of Chairman-*cum*-Managing Director of the respondent company.

14. The wage slip Ext. PW1/A is alleged to be issued by unauthorized officer of the company. The perusal of this document however shows that the said document has been issued by the authorized signatory of M/s Divya Himachal Prakashan Pvt. Ltd. In order to controvert the document RW1 Hitesh Kotia, Manager (HR) of M/s Divya Himachal Prakashan Pvt. Ltd. District Kangra, H.P. has stated on oath that the wage slip was issued on humanitarian ground by any incompetent officer on the verbal request of the petitioner. This witness has stated in his cross-examination that he is not aware of the fact that in 2019 as many as 90 employees of the respondent have given their resignation. Self stated that he was employed in October, 2019. He is not well conversant with the state of affairs that prevailed prior to his joining in the company. The statement shows that RW1 had no personal knowledge of the circumstances prevailing from the date when the document Ext. PW1/A was issued till the alleged termination of the petitioner on 15.5.2018. The official incharge of relevant time period has not been examined by the respondent. The Managing Director who alleged by took the services of petitioner as domestic servant is also not produced in the witness box. This would invariably lead to adverse inference against the facts pleaded by the respondent corresponding to issuance of document Ext. PW1/A. Learned counsel for the respondent has vehemently argued that the onus of proving employer and employee relationship is on the person who asserts its existence. The learned Authorized Representative for the petitioner has relied upon ratio of law laid down by Hon'ble High Court of H.P. titled as **Rakesh Sharma vs. Indian Oil Corporation and Anr. 2024 LLR 506** wherein it has been held by Hon'ble High Court in para No. 7 which reads as under:—

> 7. It is no longer res-integra that the burden of proving the employer-employee relationship primarily rests upon the person 4 who asserts its existence. In a situation where a person asserts to be an employee of the management which the management denies, the duty primarily rests upon the person so asserting to give positive evidence in his favour and discharge his initial burden. Once such a person has given positive evidence in his favour, only then, the burden would shift on the management to give evidence to counter such claims. The Hon'ble Supreme Court in Workmen of Nilgiri Co-op. Mkt. Society Ltd. Vs. State of Tamil Nadu and others, AIR 2004 SC 1639 held as under:—
>
> "47. It is a well-settled principle of law that the person who is set up a plea of existence of relationship of employer and employee, the burden would be upon him. 48. In N.C. John *Vs* Secretary, Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others [1973 Lab. I.C. 398], the Kerala High Court held : "The burden of proof being on the workman to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer- employee relationship." 50. The question whether the relationship between the parties is one of the employer and employee is a pure question of the fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the findings is manifestly or obviously erroneous or perverse."

15. Perusal of the above ratio laid down by Hon'ble High court shows that the burden of proving employer and employee relationship, primarily rests upon the person who asserts its existence and the question of employer employee relationship is a pure question of the fact which is to be proved by means of letter of appointment, salary slip and various other circumstances. Once the petitioner produces a positive evidence burden on shifts on respondent to counter.

16. In these circumstances of the present case the primary document on the basis of which the present claim has been preferred is the document Ext. PW1/A which is salary slip. The existence of document and the fact that same had been issued by the management of respondent is not disputed by the respondent. In these circumstances the onus shifts on the respondent to lead evidence to prove the circumstances under which the said document was issued by authorized signatory of its management.

17. The petitioner Sunil Kumar has not only stated his case by way of affidavit but his also examined oral witnesses in this regard. The production of mandays chart and other documents maintained by the respondent was not within the power and custody of mere workman who was the labourer/Mali of the company. There is however oral evidence qua the employment of the petitioner PW2 Shri Prem Das Kaundal has deposed that he was deputed with the main gate entry gate to maintain the record of entry of exit of employee and that petitioner Sunil Kumar was working in the company before his joining the services. He further stated that the name of the petitioner was mentioned in daily entry and exit sheets. Nothing in his cross-examination shows that his status as a workman with the respondent was disputed by them. PW3 Rahul Chaudhary working as Senior Engineer in the respondent, PW4 Purshotam Chand working as designer/Page Maker in the respondent company has also stated that the petitioner was working as a Mali with the respondent. The document Mark-A and Mark-B are disputed and not proved as per law but the fact that Ext. PW2 Prem Dass Kaundal, PW3 Rahul Chaudhary and PW4 Purshotam Chand are the employees of the respondent is not disputed fact. No doubt these witnesses have a labour dispute with the respondent but they are most material witnesses to show presence and working of the petitioner as an employee of the respondent in addition to the document Ext. PW1/A issuance of which has not been disputed by the respondent.

18. The only witness examined by the respondent is unaware of affairs of the company prior to 2019 and no witness contemporary to the time of alleged employment of the petitioner has been examined by the respondent. On the contrary Mark-A and Mark-B have been produced by witnesses who were not disputed to be employee of the company.

19. Ext. RW1/B is the muster roll regarding the employees of the respondent company however these document have also not been proved in accordance with the law or by the person who has prepared the same. On the other hand the oral statement qua employment and illegal termination of the petitioner made by the persons who are employees of the company established the case of the petitioner to the extent of balance of probabilities. Section 2 (a) (ii) of the Industrial Disputes Act, 1947 provides as below:

> "Section 2A (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government".

20. In view of the above provisions the present claim was maintainable under the Industrial Disputes Act, 1947 by way of direct application as the Labour-*cum*-Conciliation Officer had not dealt with the dispute within 45 days since the same was presented before it.

21. The act governing conditions of employment of employees in industrial establishment in India which is the Employee Standing Orders Act, 1946 has been drafted in order to enable the

companies to prepare draft of Standing Orders governing the conditions of the services of its employees and get the same certified by Certifying Authority. No such Standing Orders or conditions of employment certified by Certifying Authority have been produced on record by the respondent in the present case. The production of few documents alleged to be the muster roll which are also not bearing the signatures of employees mentioned therein nor proved by the person who had prepared the muster rolls will not be sufficient to shift the balance of probability in favour of respondent company. The non production of Standing Orders also lead this court to drive an adverse inference against the respondent company. In view of the above discussions it has been proved to the satisfaction of this court that there was relationship of master and servant between the petitioner and the respondent company since the wage slip pertaining February, 2012 has been produced in the present case. It can safely be considered that the petitioner was employed with the respondent from February, 2012.

22. Learned counsel for the respondent has challenged the relief in terms of Section 25-H of the Industrial Disputes Act,1947 and Section 16-A of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 on the ground that there was no evidence to show violation of terms of Section 25-H of the Industrial Disputes Act,1947 but it is pertinent to mention here that the respondent has allegedly concealed the services record of the petitioner and there is no appointment and termination record kept by the respondent in the present case. The only witness examined by respondent has no personal knowledge of the facts existing prior to his appointment. The Managing Director has not appeared in witness box to proved that petitioner was merely his domestic servant. The oral statement of petitioner's witnesses along with document Ext. PW1/A proved the petitioner as a workman i.e a Mali. Thus the petitioner was workman under Section 2(S) of the Industrial Disputes Act, 1947 and under Section 2(dd) of Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.The facts as discussed above clearly show that the services of the petitioner were terminated by the respondent in illegal and unjustified manner *w.e.f.* 15.5.2018. Accordingly, issues No. 1,6 and 7 are decided in favour of the petitioner.

*Issue No. 2*

23. The petitioner has claimed that once his illegal termination is set aside/quashed he is entitled to be reinstated with full back wages as per recommendations of Majithia Wage Board and all other consequential benefits. Since it is established that the petitioner was employed as Mali by the management of M/s Divya Himachal Prakashan Private Limited having its registered office/head office situated at Pathankot-Kangra Marg, Old Mataur, Tehsil and District Kangra, H.P. the wage entitlement of the petitioner is governed under Section 13-C, 13-D, 13-DD of Working Journalists and other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955.

24. The Hon'ble Supreme Court in **ABP Pvt. Ltd. & Anr. Vs. Union of India & Ors, AIR 2014 SC 1228** in **Writ Petition (Civil) No. 246/2011** decided on 7.2.2014 has held in para No. 41 as under:

> "41) In addition, the representatives from the employers' side are common in both the Wage Boards as all types of newspaper employees, either working journalists or non-journalists found to be working under common employers. Having common representatives of the employers on the two Wage Boards are expected to be favorable to the employers as they can make a fair assessment of the requirements of the working journalists and non- journalist newspaper employees of the newspaper industry as a whole. However, as the two Wage Boards have separate entities meant for working journalists and non-journalist newspaper employees, there cannot be common

representatives who can protect the interest and represent working journalists as well as non-journalist newspaper employees. Therefore, members representing working journalists were nominated to the Wage Board for the working journalists. Similarly, members representing non-journalist newspaper employees were nominated to the Wage Boards for non-journalist newspaper employees. As aforesaid, for administrative convenience, four independent members, including the Chairman were common for both the Wage Boards. In our cogent view, this arrangement in no way affects the interest of the employers and the challenge of the petitioners in this regard is unfounded.

Irregularity in the procedure followed by Majithia Wage Boards".

25. The constitutionality of the above provisions of Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 regarding the wages of non journalist employees was upheld of the order of Hon'ble Supreme Court.

26. The Hon'ble Supreme Court in **Avishek Raja & Ors. Vs. Sanjay Gupta, AIR 2017 SC 2955** has held in para No. 23 as under:—

"23. The Majithia Wage Board Award has been approved by this Court by its judgment dated 07.02.2014 passed in Writ Petition No. 246 of 2011. The Award, therefore, has to be implemented in full. While it is correct that issues concerning,

(i) Clause 20 (j);

(ii) whether the award applies to contractual employees;

(iii) whether it includes variable pay and

(iv) the extent of financial erosion that would justify withholding of payment of arrears has not been specifically dealt with either in the Award or in the judgment of this Court, there can be no manner of doubt that a reiteration of the scope and ambit of the terms of the Award would necessarily be called for and justified. This is what we propose to do hereinafter so as to ensure due and full compliance with the order(s) of the Court".

27. In the light of above pronouncement of non journalists employee like the present petitioner was entitled to the wages in terms of recommendations of Majithia Wage Board award.

28. It is specifically pleaded by the petitioner that he was not gainfully employed and this fact is deposed on oath by him in his affidavit. On the contrary there is no evidence to controvert the above submissions produced bythe respondent. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors., 2013 AIR SCW 5330** has held in para No.33 as under:—

"33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the

length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position

*vis-à-vis* the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, *i.e.,* the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame.

Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited *v.* Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. *v.* K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

29. In absence of any evidence to the contrary produced by the employer it can be held that the petitioner was not gainfully employed after the termination thus he is entitled to full back wages.

30. Considering the fact that the petitioner was terminated in violation of the provisions of Sections 16-A of Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and 33, 25-F, 25-G, 25-H and 25-N and Q of the Industrial Disputes Act, 1947. He is entitled to reinstatement with full back wages. The back wages shall be calculated as per the recommendations of Majithia Wage Board applicable to the Class of respondent company and post of the petitioner. The issue No. 2 is accordingly decided in favour of the petitioner.

*Issues No.3 and 4*

31. In view of findings on issues above, the claim petition is very much maintainable and this court has jurisdiction to adjudicate the dispute as per provisions of the Industrial Disputes Act and Working Journalist Act, 1955. Both these issues are decided in favour of the petitioner.

*Issue No. 5*

32. Since the petitioner is proved to have approached the court with clean hands and nothing has come to the notice of the court vide which the petitioner has suppressed the material facts from the court, hence issues No.5 is held against the respondent.

*Relief*

33. As a sequel to my findings on the issues above, the instant claim petition succeeds and is allowed. The respondent is directed to reinstate the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of his termination *i.e*. 15.5.2018. The petitioner

is also held entitled for full back wages *i.e.* amount towards back wages, which would be paid within three months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

34. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of July, 2024.

Sd/-
(PARVEEN CHAUHAN),
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal,*
*Kangra at Dharamshala, H.P.*

---

**ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप–तहसील रे, जिला कांगड़ा (हि0प्र0)**

केस नं0 : 01 / दुरुस्ती / एन टी / 2025 तारीख पेशी : 10–02–2025

श्री काकू राम पुत्र मेहर सिंह, गांव मलहन्ता, डा0 दियाणा, उप–तहसील रे, जिला कांगड़ा (हि0प्र0) .. प्रार्थी।

बनाम

आम जनता .. फरीकदोयम।

प्रार्थना–पत्र जेर धारा 38(2) नाम दुरुस्ती हि0 प्र0 भू–राजस्व अधिनियम, 1954 के अन्तर्गत करने बारे।

श्री काकू राम पुत्र मेहर सिंह, गांव मलहन्ता, डा0 दियाणा, उप–तहसील रे, जिला कांगड़ा (हि0प्र0) ने अदालत हजा में एक प्रार्थना–पत्र बाबत नाम दुरुस्ती हेतु गुजारा है कि प्रार्थी व प्रार्थी के पिता का नाम उसके स्कूल शिक्षा प्रमाण–पत्र, आधार कार्ड में व पंचायत रिकार्ड में काकू राम पुत्र मेहर सिंह दर्ज है, परन्तु राजस्व अभिलेख महाल मलहन्ता में काका राम पुत्र मेहरो पुत्र जगता दर्ज है, जिसे प्रार्थी उपरोक्त अभिलेख के अनुसार काका राम पुत्र मेहरो के बजाए काकू राम पुत्र मेहर सिंह पुत्र जगता दुरुस्त करवाना चाहता है।

अतः सर्वसाधारण को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त प्रार्थी के नाम को महाल हजा में दुरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 10–02–2025 को प्रातः 10.00 बजे असालतन व वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करे। अन्यथा प्रार्थी के नाम काकू राम पुत्र मेहर सिंह पुत्र जगता महाल मलहन्ता, उप–तहसील रे, जिला कांगड़ा, हि0 प्र0 को राजस्व रिकार्ड में दुरुस्त करने बारा आदेश पारित कर दिया जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबिले समायत न होगा।

आज दिनांक 10–02–2025 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
उप–तहसील रे, जिला कांगड़ा (हि0प्र0)।

————————

**ब अदालत कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0प्र0)**

मुकद्दमा : इन्द्राज मृत्यु तिथि पेशी : 11–02–2025

श्री प्रमोध सिंह उम्र 64 वर्ष पुत्र श्री सुदामा राम, निवासी गांव व डा0 सिहुआं, तहसील शाहपुर, जिला कांगड़ा (हि0प्र0)

बनाम

आम जनता

विषय.––जन्म एवं मृत्यु पंजीकरण अधिनियम की जेर धारा 13(3) पुनरावलोकित, 1969 के तहत मृत्यु प्रमाण–पत्र लेने बारे प्रार्थना–पत्र।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना–पत्र मय ब्यान हल्फिया गुजारा है, जिसमें लिखा है कि उसके पिता श्री सुदामा राम पुत्र श्री सिहणू, निवासी गांव व डा0 सिहुआं, तहसील शाहपुर, जिला कांगड़ा (हि0प्र0) की मृत्यु दिनांक 01–06–1971 को गांव सिहुआं में हुई है लेकिन अज्ञानतावश उनकी मृत्यु तिथि ग्राम पंचायत सिहुआं में दर्ज न करवा सकें। प्रार्थी उक्त मृत्यु तिथि को दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना–पत्र के सन्दर्भ में यदि आम जनता या अन्य किसी को उक्त मृत्यु तिथि को ग्राम पंचायत सिहुआं के रिकार्ड में दर्ज करवाने बारे कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 11–02–2025 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक ..... को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

————————

**ब अदालत कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0प्र0)**

मुकद्दमा : इन्द्राज मृत्यु तिथि पेशी : 11–02–2025

श्री केवल कुमार 67 वर्ष पुत्र श्री भगतू, निवासी गांव व डा0 सिहुआं, तहसील शाहपुर, जिला कांगड़ा (हि0प्र0)

बनाम

आम जनता

विषय.––जन्म एवं मृत्यु पंजीकरण अधिनियम की जेर धारा 13(3) पुनरावलोकित, 1969 के तहत मृत्यु प्रमाण–पत्र लेने बारे प्रार्थना–पत्र।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना–पत्र मय ब्यान हल्फिया गुजारा है, जिसमें लिखा है कि उसके पिता श्री भगतू पुत्र श्री गोपी, निवासी गांव व डा0 सिहुआं, तहसील शाहपुर, जिला कांगड़ा (हि0प्र0) की मृत्यु दिनांक 06–08–1977 को गांव सिहुआं में हुई है लेकिन अज्ञानतावश उनकी मृत्यु तिथि ग्राम पंचायत सिहुआं में दर्ज न करवा सकें। प्रार्थी उक्त मृत्यु तिथि को दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना–पत्र के सन्दर्भ में यदि आम जनता या अन्य किसी को उक्त मृत्यु तिथि को ग्राम पंचायत सिहुआं के रिकार्ड में दर्ज करवाने बारे कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 11–02–2025 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक ..... को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

––––––––––

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,**
**तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)**

Ankur Choudhary s/o Late Sh. Baldev Singh, r/o V.P.O. Mandal, Tehsil Dharamshala, District Kangra (H.P.)

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Ankur Choudhary s/o Late Sh. Baldev Singh, r/o V.P.O. Mandal, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में प्रार्थना–पत्र सहित मुकद्दमा दायर किया है कि उसकी Self Ankur Choudhary s/o Late Sh. Baldev Singh का जन्म / मृत्यु दिनांक 17–12–1984 को हुआ है, परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत Mandal में जन्म / मृत्यु पंजीकृत न हुआ है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा इश्तहार राजपत्र / मुश्त्री मुनादी के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Ankur Choudhary के जन्म / मृत्यु पंजीकृत किये जाने बारे कोई उजर / एतराज हो तो वह हमारी अदालत में दिनांक 16–02–2025 को असालतन या वकालतन हाजिर होकर अपना एतराज पेश कर सकता है, अन्यथा मुताबिक शपथ–पत्र जन्म / मृत्यु तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 08–01–2025 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)।

————————

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)**

Kusum Tamang d/o Pasag Thapa s/o Judh Veer, r/o Ward No. 13, Mahal Jhikli Dari, P.O. Dari, Tehsil Dharamshala, District Kangra (H.P.)

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Kusum Tamang d/o Pasag Thapa s/o Judh Veer, r/o Ward No. 13, Mahal Jhikli Dari, P.O. Dari, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में प्रार्थना–पत्र सहित मुकद्दमा दायर किया है कि उसकी Self Kusum Tamang d/o Smt. Pul Maya w/o Pasag Thapa का जन्म / मृत्यु दिनांक 27–03–1981 को हुआ है, परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत में जन्म / मृत्यु पंजीकृत न हुआ है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस इश्तहार राजपत्र / मुश्त्री मुनादी के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Kusum Tamang के जन्म / मृत्यु पंजीकृत किये जाने बारे कोई उजर / एतराज हो तो वह हमारी अदालत में दिनांक 17–02–2025 को असालतन या वकालतन हाजिर होकर अपना एतराज पेश कर सकता है, अन्यथा मुताबिक शपथ–पत्र जन्म / मृत्यु तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 03–01–2025 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)।

————————

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)**

Ajay Kumar s/o Arjun Singh Thapa, r/o V.P.O. Sidhwari, Tehsil Dharamshala, District Kangra (H.P.)

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Ajay Kumar s/o Arjun Singh Thapa, r/o V.P.O. Sidhwari, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में प्रार्थना–पत्र सहित मुकद्दमा दायर किया है कि उसकी Daughter Grima Thapa d/o Ajay Kumar & Smt. Poonam Thapa का जन्म / मृत्यु दिनांक 23–12–1992 को हुआ है, परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत में जन्म / मृत्यु पंजीकृत न हुआ है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा इश्तहार राजपत्र / मुश्त्री मुनादी के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त के जन्म / मृत्यु पंजीकृत किये जाने बारे कोई उजर / एतराज हो तो वह हमारी अदालत में दिनांक 22–02–2025 को असालतन या वकालतन हाजिर होकर अपना एतराज पेश कर सकता है, अन्यथा मुताबिक शपथ–पत्र जन्म / मृत्यु तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 17–01–2025 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)।

––––––––––

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,**
**तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)**

Santokh Singh s/o Bela Singh, r/o Tika Bani, P.O.Yol, Tehsil Dharamshala, District Kangra (H.P.)

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Santokh Singh s/o Bela Singh, r/o Tika Bani, P.O.Yol, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में प्रार्थना–पत्र सहित मुकद्दमा दायर किया है कि उसके son Lakhbir Singh s/o Santokh Singh का जन्म / मृत्यु दिनांक 03–06–1986 को हुआ है, परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत में जन्म / मृत्यु पंजीकृत न हुआ है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस इश्तहार राजपत्र / मुश्त्री मुनादी के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Lakhbir Singh के जन्म / मृत्यु पंजीकृत किये जाने बारे कोई उजर / एतराज हो तो वह हमारी अदालत में दिनांक 22–02–2025 को असालतन या वकालतन हाजिर होकर अपना एतराज पेश कर सकता है, अन्यथा मुताबिक शपथ–पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 16–01–2025 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)।

————————

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)**

किस्म मुकदमा : तकसीम केस नं0 : 53 / 20

रुचि पुत्री रमेश चंद पुत्र बदरी, निवासी महाल अंदराड़, मौजा नरवाना, तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0 बजरिया मुखत्यारे आम श्री अशुल शर्मा पुत्र सुरजीत कुमार पुत्र सुरजमान, निवासी महाल अंदराड़, मौजा नरवाना, तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0।

बनाम

1. कल्याण चंद, 2. उत्तम चंद कंचना देवी पुत्री व अजूध्या देवी विधवा भगवान दास, 5. सुरेश कुमार पुत्र, 6. साजो देवी पुत्री व 7. शकुंतला देवी विधवा ठाकुर दास, 8. अनिल कुमार पुत्र व 9. अरुणा देवी विधवा ईश्वर दास, 10. जांती दास पुत्र व 11. विमला देवी पुत्री रसालु, 12. अनिरुद्ध, 13. ईश्वर दास, 14. करब, 15. ओम प्रकाश पुत्र व 16. संध्या देवी पुत्री मनी राम, 17. उधो पुत्र व 18. सर्वश्रीमती धनी देवी, 19. मनसा, 20. निर्मला, 21. निममो, 22. उर्मिला पुत्रियां महाजन, 23. अजीत कुमार पुत्र वंशीधर, 24. श्याम, 25. सुबोध कुमार पुत्र व 26. नरोत्मा देवी, 27. नीना देवी पुत्रियां बिशन दास, 29. अदित्या पुत्र मदन लाल, 30. सलगधर पुत्र व 31. सरस्वती देवी Through LRS a उंखा देवी b चंचला देवी, 32. जेशी राम पुत्र अबातु, 33. नरिंदर पाठक पुत्र बलदेव चंद, 34. संजय गुप्ता पुत्र S S Gupta 35. प्यारे लाल पुत्र अच्छर राम, 36. अनिल कुमार पुत्र बलिया, 37. अजय कुमार पुत्र किशोरी लाल, निवासी महाल कार्डियाना, मौजा तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0।

विषय.––प्रार्थना–पत्र तकसीम भूमि खाता नं0 6, खतौनी नं0 18 ता 22, खसरा कित्ता 14, रकबा तादादी 00–95–44–84 है0 वाक्या महाल कार्डियाना, मौज़ा नरवाना, तहसील धर्मशाला, जिला कांगड़ा, हि0प्र0 जमाबंदी साल 2012–13

प्रार्थना–पत्र प्रार्थिया रुचि पुत्री रमेश चंद पुत्र बदरी, निवासी महाल अंदराड़, मौजा नरवाना, तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0 बजरिया मुखत्यारे आम श्री अशुल शर्मा पुत्र सुरजीत कुमार पुत्र सुरजमान, निवासी महाल अंदराड़, मौजा नरवाना, तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0 ने प्रार्थना पत्र तकसीम हुकमन बारे गुजारा है, जिसमें उपरोक्त प्रतिबादीगण को समन साधारण तरीके से तामील न हो पा रहे हैं। इसलिए प्रतिबादीगण को इस इश्तहार राजपत्र के द्वारा सूचित किया जाता है कि किसी भी पक्ष को उपरोक्त वर्णित भूमि की तकसीम बारे कोई भी उजर या एतराज हो तो वह अधोहस्ताक्षरी की अदालत में दिनांक 13–02–2025 को प्रात 11:00 बजे असालतन या वकालतन हाजिर होकर अपना उजर / एतराज पेश कर सकता है, अन्यथा हाजिर न आने की सूरत में उपरोक्त प्रतिवादीगण के खिलाफ एकतरफा कार्यवाही अमल में लाई जाएगी व तरीका तकसीम जारी कर दिया जाएगा।

आज दिनांक 04–01–2025 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)।

————————

**ब अदालत श्री हरीश कुमार, कार्यकारी दण्डाधिकारी / तहसीलदार, मुलथान, जिला कांगड़ा (हि0प्र0)**

मुकद्दमा नं0 : 01/ 2025 तारीख पेशी : 20–02–2025

अनुवाद.––पंचायत अभिलेख में जन्म तिथि दर्ज करना।

कुसमा देवी पुत्री ज्वालू राम, गांव लुवाई, डा0 लोहारडी, तहसील मुलथान, जिला कांगड़ा व हाल पत्नी जय राम, गांव अर्जून बहाल, डा0 चकमोह, तहसील बड़सर, जिला हमीरपुर, (हि0 प्र0)।

बनाम

आम जनता

विषय.––बाबत इन्द्राज जन्म तिथि अधीन जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त विषय से सम्बन्धित मुकद्दमा इस अदालत में विचाराधीन है, जिसमें उपरोक्त प्रार्थिया कुसमा देवी पुत्री ज्वालू राम ने दावा किया है कि उसका जन्म दिनांक 17–01–1973 को गांव लुवाई, डा0 लोहारडी, तहसील मुलथान, जिला कांगड़ा, हि0 प्र0 में हुआ है। जिसका जन्म पंजीकरण ईलम न होने के कारण ग्राम पंचायत मुलथान के परिवार रजिस्टर में नहीं हुआ है अब दर्ज किया जाए।

अतः इस इश्तहार राजपत्र द्वारा आम जनता को सूचित किया जाता है कि प्रार्थिया की उपरोक्त जन्म तिथि को ग्राम पंचायत मुलथान के अभिलेख में पंजीकरण करने बारे कोई उजर / एतराज हो तो वह दिनांक 20–02–2025 तक असालतन या वकालतन हाजिर आकर अपना उजर व एतराज पेश कर सकता है। हाजिर न आने की सूरत में निर्धारित तिथि के बाद किसी प्रकार का कोई भी दावा स्वीकार न होगा और नियमानुसार उपरोक्त जन्म तिथि दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 20–01–2025 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी / तहसीलदार,
मुलथान, जिला कांगड़ा (हि0 प्र0)।

————————

**ब अदालत श्री हरीश कुमार, कार्यकारी दण्डाधिकारी / तहसीलदार, मुलथान, जिला कांगड़ा (हि0प्र0)**

मुकद्दमा नं0 : 02/ 2025 तारीख पेशी : 20–02–2025

अनुवाद.––पंचायत अभिलेख में जन्म तिथि दर्ज करना।

रीना देवी पुत्री भोसनू राम, गांव तरमेहर, डा0 लोहारडी, तहसील मुलथान, जिला कांगड़ा व हाल पत्नी राजकुमार, गांव भगेड़ बुहला, डा0 बीड़, तहसील टिहरा सुजानपुर, जिला हमीरपुर, (हि0 प्र0)।

बनाम

आम जनता

विषय.––बाबत इन्द्राज जन्म तिथि अधीन जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त विषय से सम्बन्धित मुकद्दमा इस अदालत में विचाराधीन है, जिसमें उपरोक्त प्रार्थिया रीना देवी पुत्री भोसनू राम ने दावा किया है कि उसका जन्म दिनांक 01–07–1988 को गांव तरमेहर, डा0 लोहारडी, तहसील मुलथान, जिला कांगड़ा, हि0 प्र0 में हुआ है, जिसका जन्म पंजीकरण ईलम न होने के कारण ग्राम पंचायत मुलथान के परिवार रजिस्टर में नहीं हुआ है अब दर्ज किया जाए।

अतः इस इश्तहार राजपत्र द्वारा आम जनता को सूचित किया जाता है कि प्रार्थिया की उपरोक्त जन्म तिथि को ग्राम पंचायत मुलथान के अभिलेख में पंजीकरण करने बारे कोई उजर / एतराज हो तो वह दिनांक 20–02–2025 तक असालतन या वकालतन हाजिर आकर अपना उजर व एतराज पेश कर सकता है। हाजिर न आने की सूरत में निर्धारित तिथि के बाद किसी प्रकार का कोई भी दावा स्वीकार न होगा और नियमानुसार उपरोक्त जन्म तिथि दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 20–01–2025 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी / तहसीलदार,
मुलथान, जिला कांगड़ा (हि0 प्र0)।

––––––––––––

**ब अदालत श्री हरीश कुमार, सहायक समाहर्ता प्रथम श्रेणी, मुलथान, जिला कांगड़ा (हि0प्र0)**

मुकद्दमा नं0 : 01 / 2025 तारीख पेशी : 20–02–2025

किशन सिंह पुत्र राम सिंह पुत्र रूलदू, निवासी गांव व डा0 बड़ाग्रां, तहसील मुलथान, जिला कांगड़ा (हि0प्र0) ·· प्रार्थी।

बनाम

आम जनता ·· प्रतिवादी।

विषय.––राजस्व अभिलेख में नाम दुरुस्ती बारे।

उपरोक्त विषय पर आवेदक किशन सिंह पुत्र राम सिंह पुत्र रूलदू, निवासी गांव व डा0 बड़ाग्रां, तहसील मुलथान, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र मय शपथ–पत्र इस आशय से गुजार रखा है कि उसका नाम आधार कार्ड, पंचायत रिकार्ड तथा अन्य सभी दस्तावेजों में किशन सिंह पुत्र राम सिंह पुत्र रूलदू है, परन्तु महाल बड़ाग्रां के राजस्व अभिलेख में चूहड़ा राम पुत्र राम सिंह पुत्र रूलदू दर्ज हुआ है, जो कि गलत है। इसे दुरुस्त करके चूहड़ा राम उपनाम किशन सिंह पुत्र राम सिंह पुत्र रूलदू दर्ज किया जाये।

अतः सर्वसाधारण को इस इश्तहार राजपत्र द्वारा सूचित किया जाता है कि यदि किसी को राजस्व अभिलेख में इस नाम दुरुस्ती बारे कोई उजर व एतराज हो तो वह दिनांक 20–02–2025 या इससे पूर्व

असालतन या वकालतन अदालत हजा में हाजिर होकर अपना एतराज प्रस्तुत का सकता है, अन्यथा नियमानुसार राजस्व अभिलेख में नाम दुरुस्ती के आदेश पारित कर दिये जायेंगे। उपरोक्त तिथि के बाद कोई उजर व एतराज जेरे समायत न होगा तथा प्रार्थना–पत्र पर नियमानुसार उचित आदेश पारित कर दिये जायेंगे।

आज दिनांक 20–01–2025 को हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
मुलथान, जिला कांगड़ा (हि0प्र0)।

———————

## CHANGE OF NAME

I, Susheel Nath Chauhan s/o Sh. Prem Nath Chauhan, r/o Village Siun, P.O. & Tehsil Lad Bharol, District Mandi (H.P.) declare that I want to correct my minor son name from Viraj Chauhan to Aviraj Chauhan. Concerned please note.

SUSHEEL NATH CHAUHAN
*s/o Sh. Prem Nath Chauhan,*
*r/o Village Siun,*
*P.O. & Tehsil Lad Bharol, District Mandi (H.P.).*

———————

## CHANGE OF NAME

I, Poli Biswas, r/o Village & P.O. Oachghat, Tehsil &District Solan (H.P.) declare that my son Suraj Biswas CBSE Roll No. 17285634, 10th Class Certificate March-24 record the surname of mother, father and son was wrongly entered Bishwas instead of Biswas. Please note.

POLI BISWAS,
*r/o Village & P.O. Oachghat,*
*Tehsil & District Solan (H.P.).*

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध हैए वम् ऑनलाइन सत्यापित किया जा सकता है।